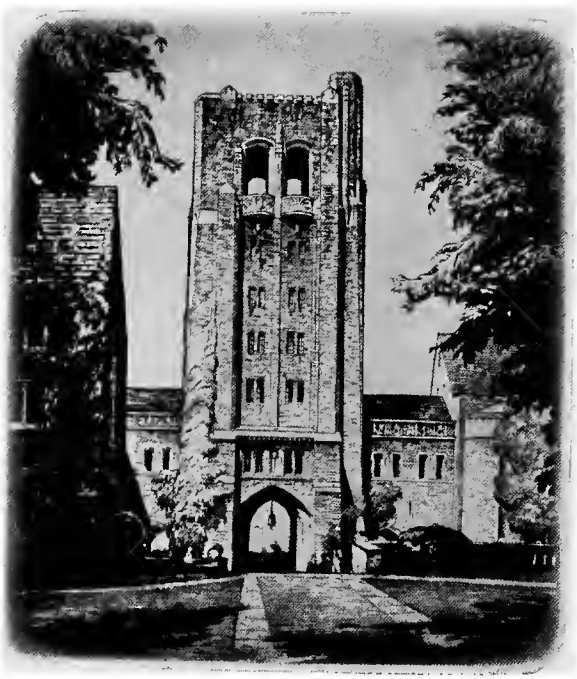
THE

CIVIL CODE OF JAPAN.



ERRATA

Art. 156, line 2: Omit "in regard to" after "interrupt".
Art. 174, subd. 2: Insert "and public performers" after "laborers".
Art. 235, par. 2: "stralght" should read "right".
Art. 313, par. 1, line 5: Insert "and" before "in such fruits".
Art. 346, line 1: "principie" should read "principal".
Id., line 2: Insert "of the pledge, for the expenses of preservation" after "enforcement".
Art. 360, par. 2: Insert "be" before "renewed".
Art. 398: Insert "up" after "set".
Art. 420, par. 2, line 3: "provisions" should read "previous".
Art. 450, subd. 3: Insert "of" after "court".
Art. 574: Insert "is" after "price".
Page 164; Law No. 40: Insert "accidental" after "the case of"

THE CIVIL CODE OF JAPAN.

VOL. I.

TRANSLATED

BY

L. H. LOENHOLM L.L.D.
Professor Emer. of the Imperial University Tokyo

and

R. H. LOENHOLM
Member of the California Bar.

FOURTH EDITION.

TOKYO AND YOKOHAMA: MARUYA & CO.

PRINTED BY STUECK & LOHDE, GELSENKIRCHEN

PREFACE.

THE first draft of a Civil Code for Japan was drawn up by Mr. Boissonade de Fontarabie, a French jurist, and followed in the main the lines of the French law. But shortly before it was to take effect, a Committee of Revision was appointed, who instead of simply revising that draft made a wholly new Code modeled closely upon the German Civil Code.

The first three Books of the present Civil Code of Japan containing general provisions, real rights and obligations are nearly entirely based upon German law, the 4th and 5th Book containing the family law and the law of succession are partly of native origin, but the original Japanese institutions retained in these parts of the Code have been greatly modernized.

The technical terms of the Civil Code are very often literal translations into Sino-Japanese of the corresponding German words. This fact and the great difference in form, arrangement and terminology between the Japanese and the English law makes it often difficult to translate the Japanese words by proper technical equivalents in English. For the most part the same Japanese word has been translated whenever it occurs by the same English word, even at the cost of an occasional awkwardness of expression; but in a few cases it was impossible to follow this rule without impairing the clearness of the sentence.

Sometimes unusual words have had to be employed to render the corresponding Japanese ex-

pressions, for instance the word "prestation", which, however, is used to some extent by recent writers in English.

A most important difference between the English system and the system embodied in the new Japanese Code is that the latter does not recognize the distinction between real and personal property, which plays so important a part in the former. The rules relating to property are mostly stated in a general form, so as to apply to all kinds of property. Furthermore the division of the English law into law and equity, which was the result of historical accidents, has no place in the Japanese Civil Code.

In the law of obligations the Japanese Code uses two words to express the meaning of the Latin word *obligatio*, namely "saiken", obligation-right and "saimu", obligation-duty. In this translation the single word "obligation", has been used to render both. In some cases, however, when it seemed necessary, obligations have been designated as existing "in favour of" or "against" persons. The English expressions "right of action" and "claim" cannot properly be used to translate the word "saiken", as they have different meanings in English law.

I have appended a translation of some small laws relating to the Civil Code and of the Law concerning the Application of Laws, drafted in an excellent manner by Prof. Nobushige Hozumi.

I acknowledge my obligation to my friend, Prof. Henry T. Terry, for his valuable assistance.

The title page of each copy of this book is stamped with the name-stamp of the translator.

Tokyo, 30th April, 1906.

L. H. LOENHOLM.

INDEX.

BOOK I.

GENERAL PROVISIONS.

CHAPTER I.

PERSONS.

SECTION I.

THE ENJOYMENT OF PRIVATE RIGHTS.

1.

The enjoyment of private rights begins at birth.

2.

Aliens enjoy private rights except as forbidden by law and ordinance or by treaty.

SECTION II.

CAPACITY.

3.

On the completion of twenty years a person becomes of full age.

4.

For the doing of a juristic act a minor must obtain the consent of his legal representative, except when he is merely to acquire a right or to be freed from a duty.

An act contrary to the provisions of the foregoing paragraph may be cancelled.

5.

When the legal representative permits a minor to dispose of property for a purpose specified by him, the minor may within the limits of such purpose dispose of it at his pleasure. The same applies if he disposes of property which he has been permitted to dispose of without any purpose being specified.

6.

A minor who has been permitted to carry on one or more businesses, has the same capacity in relation to such businesses as a person of full age.

If in such case there is evidence that the minor is not yet capable of conducting the business, his legal representative may withdraw or restrict his permission according to the provisions of Book IV of this Code on relatives.

7.

A person who is in a habitual state of mental unsoundness may on the application of himself, of the husband or wife, of a relative to the fourth degree, of the head of the house, of the guardian or curator or of the public procurator be adjudged incompetent by the court.

8.

A person adjudged incompetent is placed under guardianship.

9.

The acts of a person adjudged incompetent may be cancelled.

10.

When the cause of incompetency ceases to exist, the court must on the application of any of the persons mentioned in Art. 7 cancel the adjudication.

11.

Weakminded, deaf, dumb or blind persons and spendthrifts may be placed under curatorship as quasi-incompetent.

12.

A quasi-incompetent person must have the consent of his curator for doing the following acts:—

1. Receiving or using capital;
2. Contracting loans or giving security;
3. Doing any act whose object is the acquiring of, or parting with a right in an immovable or in a movable of importance;
4. Doing any act in the course of a lawsuit;
5. Making a gift, a compromise or an agreement of arbitration;
6. Accepting or renouncing an inheritance;
7. Refusing a gift or a legacy, or accepting a gift or a legacy subject to a charge;
8. Building, rebuilding or enlarging structures or making extensive repairs;
9. Hiring and letting for a period longer than specified in Art. 602.

In proper circumstances the court may order that the quasi-incompetent person must have the consent of the curator for acts other than those mentioned in the foregoing paragraph.

Any act contrary to the provisions of the foregoing two paragraphs may be cancelled.

13.

The provisions of Arts. 7 and 10 apply correspondinglyto quasi-incompetent persons.

14.

A wife must obtain the permission of her husband for doing the following acts:—

1. Those specified in Art. 12, 1, No. 1-6;
2. Accepting or refusing a gift or a legacy;
3. Making any contract affecting the disposition of her person.

Any act contrary to the provisions of the foregoing paragraph may be cancelled.

15.

A wife who has been permitted to carry on one or more businesses has the same capacity in relation to such businesses as a person *sui juris*.

16.

A husband may cancel or restrict the permission granted by him; but such cancellation or restriction cannot be set up against third persons acting in good faith.

17.

In the following cases a wife does not require the permission of her husband:—

1. If it is uncertain whether the husband is alive or dead;
2. If the husband has deserted her;
3. If the husband has been adjudged incompetent or quasi-incompetent;
4. If the husband because of lunacy has been placed in a hospital or a private house;
5. If the husband has been sentenced to a punishment of imprisonment of one year or a severer punishment, and is still undergoing such sentence;
6. If the interests of the husband and the wife conflict.

18.

If the husband is a minor, he can give permission for the acts of his wife only in accordance with the provisions of Art. 4.

The other party to an act of an incapacitated person may after such person has acquired capacity notify him to declare definitely within a period of not less than one month whether he will ratify his voidable act or not. If no definite answer is given within such period it is deemed to be ratified.

The same is the case if, so long as the incapacity continues, such a notification is given to the husband or legal representative, and no definite answer is made within the period fixed; but to a legal representative such a notification can only be given as to acts within the scope of his authority.

If the act is one for which special formalities are required, it is deemed to be cancelled, unless a notice that such formalities have been complied with is given within the period above specified.

To a quasi-incompetent person or to a wife a notification may be given to ratify the act with the consent of the curator or the permission of the husband within the period specified in the first paragraph. If the quasi-incompetent person or the wife does not give notice within the said period that the consent of the curator or the permission of the husband has been granted, the act is deemed to be cancelled.

20.

If an incapacitated person has used fraudulent means to cause it to be believed that he has capacity, his act cannot be cancelled.

SECTION III.

DOMICILE.

21.

The principal place where a person lives is his domicile.

22.

If the domicile is not known, the place of residence is deemed to be the domicile.

23.

If a person, whether a Japanese or an alien, has no domicile in Japan, his place of residence in Japan is deemed to be his domicile; but this does not apply, where according to the provisions of the Law concerning the Application of Laws the law of his domicile is to govern.

24.

If for the purpose of a certain act a provisional domicile has been chosen, that is deemed to be the domicile in respect to such act.

SECTION IV.

DISAPPEARANCE.

25.

If a person leaves the place which up to that time has been his domicile or residence, without having left a manager for his property, the court on the application of any person interested or of the public procurator may order all measures necessary for the management of the property to be taken. The same applies if the authority of the manager comes to an end during the absence of the principal.

If the principal afterwards institutes a manager, the court must on the application of such manager, of any person interested or of the public procurator cancel its order.

26.

If it is uncertain whether an absent person who has left a manager, is alive or dead, the court may

on the application of any person interested or of the public procurator appoint another manager.

27.

A manager appointed by the court under the provisions of the preceding two articles must make an inventory of the property to be managed by him. The costs are defrayed out of the property of the absent person.

When it is uncertain whether an absent person is alive or dead, if an application is made by a party interested or by the public procurator, the court may also order a manager left by the absent person to proceed as prescribed in the foregoing paragraph.

In addition the court may order the manager to take all measures considered necessary for the preservation of the property of the absent person.

28.

If a manager considers it necessary to do an act in excess of the powers specified in Art. 103, he may do so on obtaining the permission of the court. When it is uncertain whether the absent person is alive or dead, the same applies if a manager considers it necessary to do an act in excess of the powers conferred upon him by the absent person.

29.

The court may require a manager to give proper security for the management and the restoration of the property.

The court may allow a reasonable remuneration to a manager out of the absent person's property, having regard to the relations existing between the manager and the absent person and to other circumstances.

30.

If it has been uncertain for seven years whether an absent person is alive or dead, the court may on the application of any person interested make an adjudication of disappearance.

The same applies to a person who has gone to the seat of a war, or has been on a ship which was sunk, or has come into any other peril of his life, if it is uncertain whether he is alive or dead for three years after the war has come to an end, the ship was sunk or the other peril has passed.

31.

A person against whom an adjudication of disappearance has been made is deemed to have died at the completion of the periods specified in the preceding article.

32.

If it is proved that the person who disappeared is still alive or that he died at a time different from that specified in the preceding article, the court must on the application of such person or of any person interested cancel the adjudication of disappearance; but this does not affect the validity of acts done in good faith after the adjudication and previous to its cancellation.

A person who has acquired property under the adjudication of disappearance, even though he loses his right by its cancellation, is bound to restore such property, but only so far as he is still enriched.

CHAPTER II.

JURIDICAL PERSONS.*

SECTION I.

CREATION OF JURIDICAL PERSONS.

33.

A juridical person can come into existence only by virtue of the provisions of this law or of some other law.

34.

Associations† or foundations** for purposes of worship, religion, charity, science, art and public utility, not having as their object the making of profits, can become juridical persons by the permission of the competent public authorities.

35.

Associations for purposes of profit can become juridical persons on compliance with the conditions prescribed for the creation of commercial companies.

To such juridical associations all provisions relating to commercial companies apply correspondingly.

36.

The existence of foreign juridical persons other than States, administrative districts and commercial companies is not recognized; but this does not apply to such juridical persons as are recognized by law or treaty.

Foreign juridical persons recognized under the provisions of the foregoing paragraph have the same

* The usual term in English law is "artificial persons;" but "juridical persons" is also used by recent writers and is a closer rendering of the Japanese word.

† Shadan. "Association" is not a good translation of "shadan", but there is no better word available.

** A foundation, zaidan, is somewhat similar to a "trust" in English law, but the word "trust" cannot be used here, as the legal character of the two is different.

private rights as the same classes of juridical persons existing in Japan; but this does not apply to such rights as aliens cannot enjoy, or so far as special provisions are made by law or treaty.

37.

The creators of a juridical association must draw up articles of association containing the following particulars:—

1. The object;
2. The name;
3. The office;
4. Provisions as to the assets;
5. Provisions as to the appointment or dismissal of managers;
6. Provisions as to the acquisition or loss of the qualification as a member.

38.

The articles of a juridical association can only be changed by the consent of at least three quarters of the members; except so far as the articles themselves provide otherwise.

A change in the articles of association has effect only when it has been approved by the competent public authorities.

39.

A creator of a juridical foundation must in the act of endowment whose object is the creation of such foundation, provide for the particulars specified in Art. 37, No. 1-5.

40.

If the creator of a juridical foundation dies without having made provision as to its name, the office or the manner of the appointment or dismissal of its managers, this must be determined by the court on the application of any person interested or of the public procurator.

41.

If an act of endowment is done by a disposition *inter vivos,* the provisions relating to gifts apply correspondingly.

If an act of endowment is done by will, the provisions relating to legacies apply correspondingly.

42.

If an act of endowment is done by a disposition *inter vivos,* the property endowed becomes the property of the juridical person from the time when the permission for its creation is granted.

If an act of endowment is done by will, the property is deemed to vest in the juridical person from the time when the will takes effect.

43.

A juridical person has rights and duties accordant to the provisions of law or ordinance within the scope of its object as defined in the articles of association or the act of endowment.

44.

A juridical person is bound to make compensation for any damage done to other persons by its managers or other representatives in the exercise of their functions.

If damage is done to other persons by an act which is not within the scope of the object of the juridical person, those members or managers who approved of the resolution for such act, and those managers and other representatives who executed it, are jointly bound to make compensation.

45.

A juridical person must be registered within two weeks from the day of its creation at the place of each of its offices.

The creation of a juridical person can be set up against third persons only when it has been registered at the place of its principal office.

If a juridical person after its creation establishes a new office, registration must be made within one week.

46.

The particulars to be registered are as follows:

1. The object;
2. The name;
3. The office;
4. The date of the permission for its creation;
5. The time of duration, if that has been fixed;
6. The total amount of the property;
7. The manner in which contributions are to be made, if such manner has been provided for;
8. The names, surnames and domiciles of its managers.

If a change takes place in the particulars above specified, that must be registered within one week. Before registration the change cannot be set up against third persons.

47.

If for any of the particulars required to be registered under the provisions of Art. 45, 1 and of the preceding article the permission of the public authorities is necessary, the period for registration is computed from the time when the certificate of permission has arrived.

48.

If a juridical person transfers its office to another place, such transfer must be registered at the original place within one week, and the registration specified in Art. 46, 1 must be made at the new place within the same period.

If a transfer of office is made within the district of jurisdiction of the same Registry office, such transfer only must be registered.

49.

The provisions of Arts. 45.3, 46 and 48 apply also where a foreign juridical person has established an office in Japan; but as to facts arising in a foreign country the period for registration is computed from the time when notice thereof has arrived.

When a foreign juridical person first establishes an office in Japan, other persons may disregard the existence of such juridical person, until registration has been effected at the place of its office.

50.

A juridical person has its domicile at the place of its principal office.

51.

A juridical person must make an inventory of its property at the time of its creation and within the first three months of each year, and must keep it permanently at its office. If, however, a special business year has been established, such inventory must be made at the time of its creation and at the end of such business year.

A juridical association must keep at its office a list of its members, which must be revised whenever a change in its members occurs.

SECTION II.

THE MANAGEMENT OF JURIDICAL PERSONS.

52.

A juridical person must have one or more managers.

When there are several managers, if it is not otherwise provided in the articles of association or the act of endowment, decisions as to the affairs of the juridical person are made by a majority of the managers.

53.

The managers represent the juridical person in its affairs, but they may not act contrary to the provisions of the articles of association or to the contents of the act of endowment, and in a juridical association they must also obey the resolutions of a general meeting.

54.

Any restriction upon the powers of representation of the managers cannot be set up against third persons acting in good faith.

55.

The managers may delegate to other persons their power of representation in regard to specific acts, provided this is not forbidden by the articles of association, the act of endowment or a resolution of a general meeting.

56.

When a vacancy occurs among the managers, if there is an apprehension that damage might ensue from delay, the court on the application of any person interested or of the public procurator appoints a temporary manager.

57.

In a matter in which the interests of a juridical person conflict with those of a manager, the latter has no representative power. In such case a special representative must be appointed according to the provisions of the preceding article.

58.

By the articles of association, the act of endowment or a resolution of a general meeting one or more supervisors may be constituted for a juridical person.

59.

Supervisors have the following functions:

1. To examine into the condition of the property of the juridical person;
2. To examine into the conduct of the affairs by the managers;
3. If they discover irregularities in the condition of the property or the conduct of affairs, to report to a general meeting or to the competent authorities;
4. To convene a general meeting, if necessary, in order to make the report mentioned in No. 3.

60.

The managers of a juridical association must at least once a year hold an ordinary general meeting of the members.

61.

The managers of a juridical association may at any time, if they consider it necessary, convene an extraordinary general meeting.

The managers must call an extraordinary general meeting, whenever at least one fifth of all the members request it stating the matter to be acted upon in the meeting. This number, however, may be increased or diminished by the articles of association.

62.

A call for a general meeting must be made at least five days beforehand in the manner prescribed in the articles of association, and must state the matter that is to be the subject of the meeting.

63.

All affairs of a juridical association, so far as not entrusted by the articles of association to its managers or other officers, are regulated by a resolution of a general meeting.

64.

Except as otherwise provided in the articles of association, a resolution can be passed in a general meeting only on those matters as to which a previous notice has been given according to the provisions of Art. 62.

65.

The voting rights of all members are equal.

Members who do not attend a general meeting may vote by writing or by proxy.

The provisions of the foregoing two paragraphs do not apply if it is otherwise provided in the articles of association.

66.

A member has not the right to vote upon any resolution concerning the relations between the juridical association and himself.

67.

The affairs of a juridical person are subject to the supervision of the competent public authorities.

The competent public authorities may at any time of their own motion examine into the condition of the affairs and of the property of a juridical person.

SECTION II.

DISSOLUTION OF A JURIDICAL PERSON.

68.

A juridical person is dissolved by the following causes:—

1. If any cause of dissolution arises which is specified in the articles of association or the act of endowment;
2. If the undertaking forming the object of the juridical person has been fully accomplished or is impossible to accomplish;
3. Bankruptcy;
4. Cancellation of the permission for creation.

In addition to the cases mentioned in the foregoing paragraph a juridical association is dissolved by the following causes:—

1. A resolution of a general meeting;
2. If there are no longer any members.

69.

Except as otherwise provided for in the articles of association, a juridical association can pass a resolution to dissolve only by the consent of at least three fourths of all members.

70.

If a juridical person becomes unable to meet its obligations in full, the court upon the application of its managers or of a creditor* or of its own motion makes an adjudication of bankruptcy.

In the case mentioned in the foregoing paragraph the managers must apply immediately for an adjudication of bankruptcy.

71.

If a juridical person carries on undertakings which are beyond the scope of its object or violates the conditions under which permission for its creation was granted or does acts which might be injurious to public interests, the competent public authorities may cancel such permission.

* For the meaning of "creditor" see Art. 400.

72.

The property of a juridical person which has been dissolved, goes to the persons designated in the articles of association or the act of endowment.

If in the articles of association or the act of endowment the persons to whom the property shall go have not been designated, or no way of designating them has been provided, the managers may with the permission of the competent public authorities dispose of the property for some object similar to that of the juridical person; but in the case of a juridical association a resolution of a general meeting is required.

If no disposition is made under the provisions of the foregoing two paragraphs, the property goes to the Public Treasury.

73.

A juridical person which has been dissolved is deemed to continue in existence within the scope of the object of liquidation until the liquidation is finished.

74.

When a juridical person is dissolved, except in the case of bankruptcy, the managers become liquidators; but this rule does not apply if in the articles of association or the act of endowment it is otherwise provided, or if a general meeting has appointed other persons.

75.

If there are no such persons as ought to be liquidators under the provisions of the preceding article, or if because of a vacancy among the liquidators there is an apprehension that damage might arise, the court on the application of any person interested or of the public procurator or of its own motion may appoint liquidators.

76.

For an important cause the court on the application of any person interested or of the public procurator or of its own motion may remove a liquidator.

77.

Liquidators, except in the case of bankruptcy, must within one week after dissolution register their names and surnames, their domiciles and the cause and date of dissolution, and in any case must give notice thereof to the competent public authorities.

A liquidator who assumes his position in the course of liquidation must within one week from such time register his name and surname and also his domicile and give notice thereof to the competent public authorities.

78.

The functions of liquidators are as follows:—

1. To wind up pending business;
2. To collect obligations existing in favor of the juridical person and to perform obligations existing against it;
3. To hand over the remainder of its assets.

Liquidators may do all acts necessary for the performance of their functions as specified in the foregoing paragraph.

79.

Liquidators must within two months from the day when they assumed their functions, issue at least three public notices summoning the creditors to present their claims within a fixed period, which must not be less than two months.

Such public notice must contain a statement that, if a creditor does not present his claim within the period fixed, his obligation will be excluded from the liquidation. But liquidators cannot exclude any creditor known to them.

The liquidators must specially summon each known creditor to present his claim.

80.

If a creditor presents his claim after the period fixed in the preceding article has elapsed, he can enforce it only after all the obligations of the juridical person have been fully satisfied, and only against such property as has not yet been handed over to the persons entitled to receive it back.

81.

If during the liquidation it comes to appear that the property of the juridical person is not sufficient to fully satisfy its obligations, the liquidators must forthwith apply for an adjudication of bankruptcy and give public notice thereof.

The functions of the liquidators come to an end as soon as they have transferred the affairs of the juridical person to the administrator in bankruptcy.

If in the case mentioned in this article payments have already been made to creditors or property handed over to persons entitled to receive it back, the administrator in bankruptcy may reclaim them.

82.

The dissolution and liquidation of a juridical person are under the supervision of the court.

The court may at any time of its own motion make any examination necessary for the above mentioned supervision.

83.

When the liquidation is finished, the liquidators must give notice thereof to the competent public authorities.

SECTION IV.

PENALTIES.

84.

A manager, a supervisor or a liquidator of a juridical person is liable to a minor fine of from five yen to two hundred yen:—

1. If he omits to make any registration prescribed in this Chapter;
2. If he contravenes the provisions of Art. 51, or if he makes any false entry in the inventory or the list of members;
3. If in the cases mentioned in Arts. 67 and 82 he obstructs any examination by the competent public authorities or the court;
4. If he makes false statements to the public authorities or to a general meeting or conceals facts;
5. If contrary to the provisions of Art. 70 or Art. 81 he omits to apply for an adjudication of bankruptcy;
6. If he omits to give any public notice prescribed in Art. 79 or in Art. 81, or if he gives a false public notice.

CHAPTER III.

THINGS.

85.

Things in the sense of this law are corporeal things.

86.

Land and things fixed to it are immovables.

All other things are movables.

Obligations performable to bearer are deemed to be movables.

87.

When the owner of a thing attaches to it for its permanent use another thing owned by him, the thing thus attached is an accessory.

The accessory thing is subject to all dispositions made of the principal thing.

88.

Products taken in the ordinary use of a thing are natural fruits.

Money and other things to be received as consideration for the use of a thing are legal fruits.

89.

Natural fruits belong to the person who has the right to take them at the time when they are separated from the principal thing.

Legal fruits are acquired in proportion to the days during which the right to take them exists.

CHAPTER IV.

JURISTIC ACTS.

SECTION I.

GENERAL PROVISIONS.

90.

A juristic act whose intended effect is contrary to public order or good morals is invalid.

91.

If the parties to a juristic act have expressed an intention differing from a provision of any law or ordinance not relating to public welfare, such intention governs.

92.

When there is a custom differing from a provision of any law or ordinance not relating to

public order, if it is to be considered that the parties to a juristic act intended to be governed by such custom, such custom governs.

SECTION II.

THE EXPRESSION OF INTENTION.

93.

The effect of an expression of intention is not impaired by the fact that it is made by a person knowing that it is not his real intention. But if the other party knows or ought to know his real intention, such expression of intention is invalid.

94.

A feigned expression of intention made with the connivance of the other party is invalid.

The invalidity of such expression of intention cannot be set up against third persons acting in good faith.

95.

An expression of intention is invalid if made under a mistake as to an essential element of the juristic act; but if the person who made the expression was grossly negligent, he cannot avail himself of such invalidity.

96.

An expression of intention procured by fraud or coërcion may be cancelled.

When a third person has committed a fraud in respect to an expression of intention made to some person, it can only be cancelled if the other party knew of such fact.

The cancellation of an expression of intention procured by fraud cannot be set up against third persons acting in good faith.

97.

An expression of intention made to a person at a distance takes effect from the time when notice thereof reaches the other party.

Even though the person who made an expression of intention dies or loses his capacity after he has sent the notice, the effect of the expression of intention is not impaired thereby.

98.

If the other party is a minor or has been adjudged incompetent at the time when he receives the expression of intention, such expression cannot be set up against him; but this does not apply after his legal representative has knowledge thereof.

SECTION III.

REPRESENTATION.

99.

An expression of intention made by a representative within the scope of his authority and purporting to be made on behalf of his principal* takes effect directly as to the latter.

The provisions of the foregoing paragraph apply correspondingly to an expression of intention made by a third person to a representative.

100.

If a representative makes an expression of intention not purporting to be on behalf of another, he is deemed to have made it on his own behalf; but if the other party knows or ought to know that he acts for the principal, the provisions of Art. 99, 1 apply correspondingly.

* The word "principal" denotes any person who is represented by another in a juristic act.

101.

When the validity of an expression of intention would be influenced by defect in the intention, by fraud or coercion, or by knowledge or negligent ignorance of a certain circumstance, the existene or non-existence of such fact is determined as it exists with reference to the representative.

When a representative is charged with the doing of a specific juristic act, if he does such act according to the directions of the principal, the latter cannot avail himself of the ignorance of his representative in regard to a circumstance which he himself knew. The same applies to circumstances of which he was ignorant through negligence.

102.

A representative need not be a person of capacity.

103.

A representative whose authority is not specified, has authority only to do the following acts:

1. Acts for preservation;
2. Acts for the use or improvement of the thing or right which forms the subject of representation, but without changing its nature.

104.

A representative whose authority is founded upon a mandate* may appoint a substitute only with the sanction of the principal or in case of unavoidable necessity.

105.

A representative who in the case mentioned in the preceding article appoints a substitute is responsible to the principal for the appointment and for supervision.

* See Art. 643 *et seq.*

A representative who appoints a substitute in compliance with a designation by the principal is responsible only in case he knew his unfitness or untrustworthiness and omitted to inform the principal thereof or to remore the substitute.

106.

A legal representative may appoint a substitute on his responsibility; but in case of unavoidable necessity he incurs only the responsibility specified in Art. 105, 1.

107.

A substitute represents the principal in regard to acts lying within the scope of his authority.

A substitute has the same rights and duties as a representative as against the principal and third persons.

108.

Nobody can in the same juristic act be representative of the other party or representative of both parties; but this does not apply to the fulfilment of an obligation.

109.

A person who holds out another to a third person as his representative is bound by all acts between such other and the third person within the scope of such authority.

110.

When a representative does an act in excess of his authority, if the third person had reasonable ground to believe that it was within his authority, the provisions of the preceding article apply correspondingly.

111.

The right of representation is extinguished by the following causes:

1. By the death of the principal;
2. By the death of the representative or by his being adjudged incompetent or bankrupt.

The right of representation founded on a mandate is also extinguished by the termination of the mandate.

112.

The extinction of the right of representation cannot be set up against a third person acting in good faith, unless the third person is ignorant of the fact through his own negligence.

113.

If a person without having a right of representation makes a contract as representative of another, such contract has no effect against the principal, unless he ratifies it.

A ratification or its repudiation can only be set up against the other party if it has been made to him; but this does not apply if the other party knew such fact.

114.

In the case mentioned in the preceding article the other party may fix a reasonable period and call upon the principal to answer definitively within that period whether he will ratify or not. If the principal does not give definitive answer within such period, he is deemed to have refused to ratify.

115.

A contract made by a person without having a right of representation can be cancelled by the other party so long as the principal has not ratified it; but this does not apply if the other party knew at the time of the contract of the want of the right of representation.

116.

Unless a different intention is expressed, the effect of the ratification relates back to the time of the making of the contract; but this cannot impair the rights of third persons.

117.

If a person who made a contract as representative of another cannot establish his right of representation and has not obtained its ratification by the principal, he is responsible to the other party at the latter's option either for fulfilment or for damages.

The provisions of the foregoing paragraph do not apply if the other party knew that the representative had no right of representation, or if he was ignorant of it through his own negligence, or if the person who made the contract as representative had not the capacity required.

118.

The provisions of the preceding five articles apply correspondingly to a unilateral act only if the other party at the time of the act consents that the act be done without the person acting as representative having a right of representation, or if he does not dispute his right of representation. The same applies when a unilateral act is done to a person having no right of representation with his consent.

SECTION IV.

INVALIDITY AND CANCELLATION.

119.

An invalid act does not become effective by ratification; but if the party concerned ratifies it with

knowledge of its invalidity, he is deemed to have done a new act.

120.

A voidable act can be cancelled only by the incapacitated person or the person who has made the defective expression of intention or by a representative or successor of such person.

An act done by a wife may also be cancelled by her husband.

121.

An act which has been cancelled is deemed to have been invalid from the beginning; but an incapacitated person is bound to make restoration to the extent to which he is still enriched by the act.

122.

If any person specified in Art. 120 ratifies a voidable act, it is deemed to have been valid from the beginning; but the rights of third persons cannot be impaired thereby.

123.

If the other party to a voidable act is a determinate person, such act is cancelled or ratified by an expression of intention made to him.

124.

A ratification is valid only if it is made after the state of facts forming the cause of cancellation has ceased to exist.

Acts of which a person adjudged incompetent acquires knowledge after he has recovered his capacity, can be ratified by him only after acquiring such knowledge.

The provisions of the foregoing two paragraphs do not apply to ratification by a husband or a legal representative.

125.

If after the time when according to the preceding article ratification could be made, any of the following facts takes place in regard to a voidable act, it is deemed to be ratified, unless a reservation is expressed, namely:

1. An entire or part fulfilment;
2. A demand for fulfilment;
3. A novation;*
4. The giving of security;
5. An entire or part assignment of the rights acquired by the voidable act;
6. Compulsory execution.

126.

If the right of cancellation is not exercised within five years from the time when ratification could have been made, it is extinguished by prescription. The same applies if twenty years have elapsed since the act was done.

SECTION V.

CONDITIONS AND TIME OF COMMENCEMENT OR ENDING.

127.

A juristic act subject to a condition precedent takes effect when the condition is fulfilled.

A juristic act subject to a condition subsequent ceases to have effect when the condition is fulfilled.

If the parties to the act have expressed an intention that the effect of the fulfilment of a condition shall relate back to a time before its fulfilment, such intention governs.

* See Arts. 513 *et seq.*

128.

A party to a juristic act subject to a condition must not, while the condition is pending, do anything by which the benefits which the other party might derive from the fulfilment of the condition will be impaired.

129.

The rights and duties which the parties have while the condition is pending, may be dealt with, inherited, protected or secured according to the general provisions.

130.

If the party whose interests would be adversely affected by the fulfilment of a condition intentionally obstructs its fulfilment, the other party may treat it as if it had been fulfilled.

131.

When the condition is already fulfilled at the time of the juristic act, the latter is unconditionally valid if the condition is precedent, and is invalid if the condition is subsequent.

When it is already certain at the time of the juristic act that the condition cannot be fulfilled, the act is invalid if the condition is precedent, and unconditionally valid if the condition is subsequent.

In the cases mentioned in the foregoing two paragraphs the provisions of Arts. 128 and 129 apply correspondingly so long as the parties do not know whether the condition is fulfilled or cannot be fulfilled.

132.

A juristic act upon an unlawful condition is invalid, and the same applies to an act conditioned upon the not doing of an unlawful act.

133.

A juristic act upon a condition precedent which is impossible is invalid.

A juristic act upon a condition subsequent which is impossible is unconditionally valid.

134.

A juristic act upon a condition precedent which depends merely upon the will of the debtor is invalid.

135.

If a time of commencement* is annexed to a juristic act, its performance cannot be demanded until such time has arrived.

If a time of ending† is annexed to a juristic act, its effect ceases when such time arrives.

136.

It is presumed that a time of commencement or ending is fixed for the benefit of the debtor.

The benefit of time may be waived, but this will not impair any benefit which would accrue therefrom to the other party.

137.

In the following cases the debtor cannot allege the benefit of a time of commencement or ending:

1. If he has been adjudged bankrupt;
2. If he has destroyed or diminished the security;
3. If he has not given security when he was bound to give it.

---

* dies a quo. † dies ad quem.

CHAPTER V.

PERIODS OF TIME.

138.

The manner of computing periods of time is governed by the provisions of this Chapter, unless it is otherwise provided by law or ordinance, by a judicial order or by a juristic act.

139.

When a period is fixed by hours, it begins to run at once.

140.

When a period is fixed by days, weeks, months or years, the first day of the period is not included; but this does not apply if the period begins precisely at midnight.

141.

In the case mentioned in the preceding article the period ends at the end of the last day of the period.

142.

When the last day of a period is a great festival day or a Sunday or any other holiday, if it is customary not to carry on transactions on such day, the period ends on the next day.

143.

When a period is fixed by weeks, months or years, it is calculated according to the calendar.

If a period is not computed from the beginning of a week, month or year, it ends on the day preceding that day of the last week, month or year which corresponds to that on which it began. If in a period fixed by months or years there is no corresponding day in the last month, the last day of such month is the day of ending.

CHAPTER VI.

PRESCRIPTION.

SECTION I.

GENERAL PROVISIONS.

144.

The effect of prescription relates back to the day from which its period is computed.

145.

If the party concerned does not claim the benefit of prescription, the court cannot make it the ground of its judgment.

146.

The benefit of prescription cannot be waived beforehand.

147.

Prescription is interrupted by the following causes:

1. By a demand;
2. By a seizure, a provisional seizure or a provisional disposition;*
3. By an acknowledgment.

148.

The interruption of prescription as mentioned in the preceding article has effect only as between the parties and their successors.

149.

A judicial demand has no effect to interrupt prescription, if the action is rejected or withdrawn.

150.

An order for payment has no effect to interrupt prescription, if the lit ispendence loses its effect.

* See Art. 737 *et seq.* of the Code of Civil Procedure.

151.

A summons for the purpose of an amicable settlement has no effect to interrupt prescription, if the other party does not appear, or no settlement is effected, and no action is brought within one month. The same applies if the parties appear voluntarily, but a settlement is not effected.

152.

Participation in bankruptcy proceedings has no effect to interrupt prescription, if the creditor afterwards withdraws from the proceedings or his claim is rejected.

153.

A summons has no effect to interrupt prescription, unless within six months a judicial demand is made or a summons for an amicable settlement is issued, or both parties voluntarily appear for that purpose, or a participation in bankruptcy proceedings takes place, or a seizure or provisional seizure is levied, or a provisional disposition made.

154.

A seizure, a provisional seizure or a provisional disposition has no effect to interrupt prescription, if it is vacated on the application of the person entitled or because it was not in accordance with the provisions of law.

155.

A seizure, a provisional seizure or a provisional disposition not made against the person in whose favor prescription runs, has no effect to interrupt prescription, until after such person has been notified of it.

156.

In order to make an acknowledgment effectual to interrupt in regard to prescription, capacity or

authority to dispose in regard to the right of the other party is not required.

157.

From the time when the cause of interruption ceases, the interrupted prescription begins again to run.

A prescription interrupted by a judicial demand begins again to run from the time when the decision becomes finally binding.

158.

Against a minor or a person adjudged incompetent, who within six months before the period of prescription would end is without a legal representative, prescription is not completed until six months after the time when he acquires legal capacity or a legal representative has assumed his functions.

159.

As to rights of an incapacitated person against his father, mother or guardian managing his property, prescription is not completed until six months after he has acquired capacity or a subsequently appointed legal representative has assumed his functions.

The same applies to rights of a wife against her husband until six months after the dissolution of the marriage.

160.

As against property succeeded to by inheritance, prescription is not completed until six months after the time when the heir is definitely determined, an administrator appointed or an adjudication of bankruptcy made.

161.

If at the time when the period of prescription would end, an interruption of the prescription cannot take place because of a natural calamity or an unavoidable accident, prescription is not completed until two weeks after the time when such obstacle has ceased to exist.

SECTION II.

ACQUISITIVE PRESCRIPTION.

162.

A person who during twenty years with the intention to be owner has held undisturbed and open possession of a thing belonging to another acquires the ownership of it.

A person who during ten years with the intention to be owner has held undisturbed and open possession of an immovable belonging to another acquires the ownership of it, if he was at the beginning of his possession in good faith and without fault.

163.

A person who has exercised any sort of property right other than ownership undisturbedly and openly with the intention to have it for himself, acquires such right after twenty or ten years according to the distinction mentioned in the preceding article.

164.

The prescription mentioned in Art. 162 is interrupted, if the possessor voluntarily abandons his possession, or if he is dispossessed by another.

165.

The provisions of the preceding article apply correspondingly to the case mentioned in Art. 163.

SECTION III.

EXTINCTIVE PRESCRIPTION.

166.

Extinctive prescription, begins to run from the time when the right can be exercised.

The provisions of the foregoing paragraph do not prevent the running of acquisitive prescription, from the time of possession, in favor of a third person who possesses a thing being the subject of a right to which a time of commencement or a condition precedent is annexed; but the person entitled can always demand an acknowledgment by the possessor in order to interrupt the prescription.

167.

An obligation is extinguished if it is not exercised for ten years.

A property right other than an obligation or ownership is extinguished if it is not exercised for twenty years.

168.

An obligation for periodical payments of money is extinguished if it is not exercised for twenty years from the time for the first payment. The same applies if it is not exercised for ten years from the time for the last payment.

The creditor of such an obligation may at any time, in order to obtain evidence of the interruption of prescription, demand from the debtor a written acknowledgement.

169.

If an obligation whose object is the prestation of money or other things determined by the year or a lesser period is not exercised for five years, it is extinguished.

170.

The following obligations are extinguished, if they are not exercised for three years:—

1. Obligations in favour of physicians, midwives and apothecaries for attendance, services and medicines;
2. Obligations in favour of engineers, builders and contractors for their work; but this prescription is computed from the time when the work in their charge is finished.

171.

The responsibility of lawyers, notaries and bailiffs as to documents which they have received in their capacity as such, ceases after three years, in the case of lawyers from the time when the matter was finished, in the case of notaries und bailiffs from the time when they have performed their duties.

172.

Obligations in favor of lawyers, notaries or bailiffs relating to their functions are extinguished if they are not exercised for two years from the time when the matter out of which the obligation arose was finished; but an obligation relating to any particular fact occurring in the course of such matter is extinguished after five years from the time when such fact was finished, even though the above period of two years has not yet expired.

173.

The following obligations are extinguished if they are not exercised for two years:—

1. The price of products and goods sold by producers, wholesale or retail dealers;
2. Obligations relating to the work of artisans working in their home and of manufacturers;

3. Obligations in favor of keepers of schools and boarding schools, of teachers and masters for the price for instruction, clothing, board and lodging of pupils and apprentices.

174.

The following obligations are extinguished if they are not exercised for one year:

1. Pay of employees fixed by the month or a shorter time;
2. Wages of laborers and the price of things supplied by them;
3. Freight;
4. Charges for lodging, for food and drink, for hire of seats, entrance fees, the price of things consumed as well as advances of money in inns, restaurants, assembly rooms for hire and places of amusement;
5. Price for the hire of immovables.

BOOK II.

REAL RIGHTS.

CHAPTER I.

GENERAL PROVISIONS.

175.

Real rights other than those determined by this law or by other laws cannot be established.

176.

The creation and the transfer of a real right take effect from the mere expression of intention of the parties.

177.

The acquisition or loss of a real right in an immovable and any alteration in such right can be set up against third persons only if such fact is registered according to the provisions of the Law of Registration.

178.

The assignment of a real right in a movable can be set up against third persons only if the thing is delivered.

179.

When the ownership of, and any other real right in, the same thing become vested in the same person, such real right is extinguished; but this does not apply if such thing or such real right is the subject of a right of a third person.

If any real right, except ownership, and another right, the subject of which is such real right, become vested in the same person, such other right is ex-

tinguished. In such case the proviso of the foregoing paragraph applies correspondingly.

The provisions of the foregoing two paragraphs do not apply to possessory rights.

CHAPTER II.

POSSESSORY RIGHTS.

SECTION I.

ACQUISITION OF POSSESSORY RIGHTS.

180.

A person acquires a possessory right by holding a thing with the intention of doing so for himself.

181.

A possessory right may be acquired through a representative.

182.

An assignment of a possessory right is made by the delivery of the thing possessed.

If the assignee or his representative is actually holding the thing, the assignment of a possessory right may be made by a mere expression of intention by the parties.

183.

When a representative expresses an intention to hold a thing which he has in his own possession thereafter for a principal, the latter acquires thereby a possessory right.

184.

When possession of a thing is held through a representative, if the principal directs the representative to hold possession of the thing thereafter for a third person, such third person acquires the possessory right upon consenting thereto.

185.

When in consequence of the nature of his title a possessor holds without the intention of being owner, he can change the nature of his possession only by a notice to the person who put him into possession, that he intends to hold possession as owner, or by beginning a new possession under a new title with the intention of holding as owner.

186.

It is presumed that a possessor possesses with the intention of holding as owner, in good faith, undisturbed and openly.

If it is proved that a person has possessed a thing at two different times, it is presumed that his possession has continued during the interval.

187.

The successor of a possessor can allege at his option either his own possession only or his own possession together with that of his predecessor.

If together with his own possession he alleges the possession of his predecessor, he succeeds also to its defects.

SECTION II.

THE EFFECT OF POSSESSORY RIGHTS.

188.

It is presumed that a possessor has lawfully the right which he exercises over the thing possessed.

189.

A possessor in good faith acquires the fruits of the thing possessed.

If a possessor in good faith is defeated in a petitory* action, he is deemed to be a possessor in bad faith from the time of the commencement of the action.

* See Art. 202.

190.

A possessor in bad faith is bound to restore the fruits and to compensate the price of those which he has already consumed or by his fault damaged or omitted to secure.

The provisions of the foregoing paragraph apply correspondingly to a person who possesses by force or clandestinely.

191.

If the thing possessed is lost or damaged by a cause attributable to the possessor, a possessor in bad faith is liable to the person who reclaims the thing for full damages, and a possessor in good faith is liable so far as he is actually enriched by reason of such loss or damage; but a possessor who has not the intention to hold as owner is liable for all damages even though he is in good faith.

192.

If a person without disturbance and openly begins to possess a movable thing in good faith and without fault, he acquires at once the right exercised by him over the thing.

193.

If in the case mentioned in the preceding article the thing possessed is one which has been stolen or lost, the person whose thing was stolen or the loser may reclaim the thing from the possessor within two years from the time of the theft or loss.

194.

If a possessor has acquired the thing stolen or lost in good faith by purchase at auction or in a public market or from a trader who deals in goods of the same kind, the person whose thing was stolen or the loser can reclaim it from the possessor only

on condition that he refunds to the possessor the amount which the latter has paid for it.

195.

A person who has possession of an animal other than a domestic animal, which was formerly kept by another person, acquires the right which he exercises over such animal, if he began his possession in good faith and the former keeper of the animal does not reclaim it from him within one month from the time when it escaped.

196.

When a possessor restores the thing possessed, he is entitled to reimbursement from the person who reclaims it for whatever amount he has expended on its preservation and for other necessary expenses; but if the possessor has acquired the fruits of the thing, the ordinary necessary expenses fall upon him.

If a possessor has expended money in improving the thing possessed or incurred other beneficial expenses for it, provided that an increase of the value of the thing still exists therefrom, he is entitled against the person who reclaims it, at the latter's option, either to the amount of such expenditure or to the increase of value. But as against a possessor in bad faith the court may on the application of the person reclaiming grant him a reasonable time for payment.

197.

A possessor may bring a possessory action* as provided in the following five articles. This applies also to a person who holds possession for another.

* See Art. 202.

198.

If a possessor is disturbed in his possession, he may by an *action for the maintenance of possession* claim the stoppage of the disturbance and damages.

199.

If there is an apprehension that his possession is about to be disturbed, a possessor may by an *action for the preservation of possession* claim the prevention of such disturbance or security for damages.

200.

If a possessor is dispossessed, he may by an *action for the recovery of possession* claim the restoration of the thing and damages.

Against a singular successor of a dispossessor an action for the recovery of possession will not lie, unless he had knowledge of the fact of the dispossession.

201.

An action for the maintenance of possession must be brought while the disturbance continues or not later than one year after it has ceased. But if the thing possessed is damaged by any construction, the action cannot be brought after one year has elapsed since the beginning of such construction, or after it is completed.

An action for the preservation of possession can be brought at any time while the danger of injury continues; but if there is an apprehension that damage will arise to the thing possessed from any construction, the proviso of the foregoing paragraph applies.

An action for the recovery of possession must be brought within one year from the time of the dispossession.

202.

A possessory action and a petitory action* do not exclude each other.

A possessory action cannot be decided upon grounds relating to the petitory right.

SECTION III.

EXTINCTION OF POSSESSORY RIGHTS.

203.

A possessory right is extinguished if the possessor abandons the intention to possess, or if he loses the detention† of the thing, unless he brings an action for the recovery of possession.

204.

If possession is held through a representative, a possessory right is extinguished:—

1. If the principal abandons the intention to have the representative hold possession;
2. If the representative expresses to the principal his intention thereafter to hold the thing possessed for himself or for a third person;
3. If the representative loses the detention of the thing possessed.

A possessory right is not extinguished by the mere extinction of the right of representation.

---

* Petitory action, *honken no uttae,* is any action founded upon the right itself, *e. g.* upon the right of ownership or superficies etc. Possessory action, *senyu no uttae,* means an action based on the fact of possession.

† Detention means any physical holding of a thing.

SECTION IV.

QUASI POSSESSION.

205.

If a person exercises a property right with the intention to have it for himself, the provisions of this Chapter apply correspondingly.

CHAPTER III.

OWNERSHIP.

SECTION I.

THE EXTENT OF OWNERSHIP.

206.

An owner has the right, subject to the restrictions imposed by law or ordinance, freely to use the thing owned, to take the profits of it and to dispose of it.

207.

The ownership of land, subject to the restrictions imposed by law or ordinance, extends above and below the surface.

208.

If several persons divide a building so that each owns a part of it, those parts of the building and its appurtenances which are used in common, are presumed to be owned in common.

The expenses of repairs of the parts held in common and other charges are divided according to the value of the part owned by each person.

209.

An owner of land may claim the use of adjoining land so far as necessary for the purpose of the erection of, or repairs in, a wall or building on or

near the boundary line; but he cannot enter upon the dwelling house of a neighbor without the latter's consent.

If in the case of the foregoing paragraph the neighbor sustains any damage, he may claim compensation in money.

210.

If land is so surrounded by other land that it has no access to the public highway, the owner of such land may pass over the surrounding land to reach the highway.

The same applies, if passage can only be had over a pond, marsh, river or canal or over the sea, or if there is a steep slope with a considerable difference of level between the land and the highway.

211.

In the cases mentioned in the preceding article the locality and the manner of the passage must be so chosen as to meet the needs of the person entitled to passage and at the same time to cause as little injury as possible to the surrounding land.

If necessary, the person entitled to passage may construct a road for passage.

212.

The person entitled to passage must pay a compensation for any injury to the land over which the passage lies. Such compensation, exept for damage arising from the construction of a road, can be made by annual payments.

213.

If in consequence of a partition land is left without access to the highway, the owner of such land may pass to the highway only through land owned by the other persons who were parties to

the partition. In such case no compensation need be paid.

The provisions of the foregoing paragraph apply correspondingly if the owner of land has assigned a part of it.

214.

The owner of land cannot obstruct the natural flow of water from adjoining land.

215.

If by reason of some accident the flow of the water is obstructed upon the lower land, the owner of the higher land may at his own expense construct any works necessary for the off-flow of the water.

216.

If by the destruction of or any obstruction to works erected on land for collecting, discharging or conducting water, damage is caused to other land, or if there is an apprehension that damage may be caused thereby, the owner of the other land may require the owner of the former land to make repairs or provide for the off-flow of the water, and, if necessary, to construct works for protection.

217.

If in the cases mentioned in the preceding two articles there is any special custom as to defrayment of the expenses, such custom governs.

218.

The owner of land cannot construct any roof or other structures so that rain water falls directly upon adjoining land.

219.

The owner of land on which there is a ditch, canal or other water course cannot change its water-

flow or width, if the land on the opposite bank belongs to another person.

If the land on both banks belongs to the owner of the land on which the water course is, he may change its water-flow and width, but the water must be restored to its natural course at the place of exit.

If there is a custom different from the provisions of the foregoing two paragraphs, such custom governs.

220.

The owner of high land, in order to drain wet land or to get rid of waste water used for domestic, agricultural or industrial purposes, may conduct water through low land to a highway, a public water course or a drain; but the locality and manner must be so chosen as to do the least possible damage to the low land.

221.

The owner of land may use for the conduct of the water of his land any structures made by the owner of high or low land.

If in the case of the foregoing paragraph a person uses structures made by another, he must bear a part of the expenses of their construction and preservation in proportion to the benefit acruing to him therefrom.

222.

If there is a need for the construction of a dam on land on which there is a water course, the owner of the land may join it to the opposite bank; but he must pay compensation for any damage arising therefrom.

If a part of the land on which the water course is, belongs to the owner of the opposite bank, the latter may also use the dam, but he must bear a part

of the expenses in accordance with the provisions of the preceding article.

223.

The owner of land may at the joint expense of himself and the owner of the adjoining land set up things to mark the boundary.

224.

The neighbors must bear equally the expenses of constructing and maintaining the boundary marks; but the expense of a survey is divided in proportion to the areas of their lands.

225.

If between two buildings belonging to different owners there is land which is not built upon, either owner may set up a fence on the boundary line at their joint expense.

If the parties cannot agree, the fence shall be made of boards or bamboos and shall be six ***shaku**** high.

226.

The neighbors must bear the expense of the construction and preservation of the fence equally.

227.

Each of the neighbors has the right to make the fence of better materials or higher than is provided in Art. 225, 2, but the additional expense of doing so he must bear himself.

228.

If there is a custom different from the provisions of the preceding three articles such custom governs.

* See note to Art. 234.

229.

Boundary marks, fences, walls and ditches made on the boundary line are presumed to belong in common to the neighbors.

230.

To a wall standing on a boundary line, which forms a part of a building, the provisions of the preceding Article do not apply.

The same applies to that portion of a wall between two buildings of unequal height, which overtops the lower building, unless it is a wall built for protection against fire.

231.

Each neighbor has a right to carry up a common wall higher, but if the wall cannot bear such work, he must at his own expense increase the structure or must rebuild the wall.

The addition made to the height of the wall under the provisions of the foregoing paragraph is in the sole ownership of the person who carried out such work.

232.

If in the case mentioned in the preceding article the neighbor is damaged, he may claim compensation.

233.

If the branches of bamboos or trees on adjoining land extend over the boundary line, the owner of such bamboos or trees may be required to cut them off.

If the roots of bamboos or trees on adjoining land extend over the boundary line, they may be cut off.

234.

In erecting buildings there must be a distance of not less than one *shaku* five *sun** from the boundary line.

If a person is erecting a building in contravention of the provisions of the foregoing paragraph, the owner of the neighboring land may stop its erection or have it changed; but after a year has elapsed since the commencement of the building, or after the building has been completed, he can only claim damages.

235.

A person who makes at a distance of less than three *shaku* from the boundary line a window or verandah which overlooks the residential grounds of another person must attach a screen.

The distance in the foregoing paragraph is computed at a straight angle from that point of the window or verandah which is nearest to the neighboring land, to the boundary line.

236.

If there is a custom different from the provisions of the preceding two articles, such custom governs.

237.

If a well, a cistern, a cesspool or a receptacle for manure is to be dug, it must be at a distance of not less than six *shaku* from the boundary line; or if a pond, a cellar or a privy vault is to be dug, it must be at a distance of not less than three *shaku* from the boundary line.

Water pipes must be laid or ditches dug at a distance of not less than one half of their depth from the boundary line; but in no case need the distance be more than three *shaku*.

* One *shaku* = .994, foot, one *sun* = 1.193 inch.

238.

If a work as mentioned in the preceding article is carried out near to the boundary line, due care must be taken to prevent earth or sand from caving in or water or filth from percolating through.

SECTION II.

ACQUISITION OF OWNERSHIP.

239.

The ownership of a movable thing which has no owner is acquired by possessing it with the intention of being owner.

An immovable thing which has no owner falls to the ownership of the State Treasury.

240.

The finder of a lost article acquires the ownership of it, if the owner cannot be ascertained within one year after public notice has been given according to the provisions contained in special laws.

241.

The finder of hidden treasure acquires the ownership of it, if the owner cannot be ascertained within six months after public notice has been given according to the provisions contained in special laws. But in case of hidden treasure found in a thing belonging to another, the finder and the owner acquire the ownership in equal shares.

242.

The owner of an immovable thing acquires the ownership of a thing which is connected with it as an accessory; but this does not affect the rights

of another person who by virtue of a title has attached the thing to the other.

243.

If several movable things belonging to different owners are connected to each other so that they cannot be separated without injury, the ownership of the thing combined belongs to the owner of the principal movable. The same applies if separation can be made only at an excessive cost.

244.

If in regard to movable things connected together there cannot be made a distinction of principal and accessory, the owners of the single movables hold the thing combined in common, in proportion to their values which the separate things had at the time of connection.

245.

The provisions of the preceding two articles apply correspondingly if things belonging to different owners are mixed together so that distinction becomes impossible.

246.

If a person has worked up a movable thing of another, the ownership of the thing worked up belongs to the owner of the materials; but if the value created by the work largely exceeds the value of the materials, the worker acquires the ownership of such thing.*

If the worker has supplied a part of the materials, he acquires the ownership of the thing only in case the value of the materials supplied by him together with the value of his work exceeds the value of the materials supplied by the other.

* This is nearly the same as what is called *specificatio* in Roman law.

247.

If the ownership of a thing is extinguished under the provisions of the preceding five articles, all other rights in the thing are also extinguished.

If the owner of such a thing becomes sole owner of the thing combined, mixed or worked up, the rights mentioned in the foregoing paragraph exist henceforth in the thing combined, mixed or worked up, or if he becomes co-owner, in his share.

248.

A person who has suffered a loss by the application of the provisions of the preceding six articles may claim compensation according to the provisions of Arts. 703 and 704.

SECTION III.

CO-OWNERSHIP.

249.

Each co-owner may use the whole of the thing held in common in proportion to his share.

250.

If is presumed that the shares of the co-owners are equal.

251.

No co-owner has the right to make any alteration in the thing held in common without the consent of the other co-owners.

252.

Except in the case mentioned in the preceding article matters relating to the management of the thing held in common are decided by the majority of the co-owners accordant to the value of the share of each of them; but each co-owner has the right to do acts of preservation.

253.

Each co-owner pays the expenses of the management and bears the charges upon the thing held in common, in proportion to his share.

If a co-owner does not perform the obligations mentioned in the foregoing paragraph for one year, the other co-owners have a right to acquire his share on payment of a reasonable compensation.

254.

An obligation existing in favor of one co-owner against another co-owner in regard to the thing held in common, may be exercised against a singular successor of the latter.

255.

If one of the co-owners renounces his share, or if he dies without an heir, his share accrues to the other co-owners.

256.

Each co-owner has a right to demand at any time the partition of the thing held in common, but it may be provided by contract that partition shall not be made for a period not exceeding five years.

This contract may be renewed, but its duration from the time of renewal must not exceed five years.

257.

The provisions of the preceding article do not apply to such things held in common as are mentioned in Art. 208 and Art. 229.

258.

If the co-owners cannot agree, application may be made to the court for partition.

If in case of the foregoing paragraph partition of the thing itself cannot be made, or if there is reason

to apprehend that by partition the value of the thing would be considerably diminished, the court may order the thing to be sold by auction.

259.

If an obligation exists in favor of one co-owner against another co-owner relating to the co-ownership, the former may at the time of partition claim performance out of the share falling to his debtor.

If it is necessary for such performance to sell the share in the thing held in common falling to the debtor, the creditor may demand such sale.

260.

Any person who has a right in regard to the thing held in common, and the creditors of a co-owner may at their own expense intervene in the partition.

If in disregard of an application made according to the provisions of the foregoing paragraph, partition is effected without waiting for the intervention, the partition cannot be set up against the persons who made the application for intervention.

261.

Each co-owner is bound in accordance to his share by the same warranties as a seller in respect to the things which the other co-owners have received under the partition.

262.

After the partition has been terminated, each party must preserve all documents relating to the thing which he has received.

Documents relating to the thing partitioned among all or several of the co-owners must be preserved by the person who has received the largest share.

If in the case of the foregoing paragraph, there is no person who has received a larger share, a custo-

dian is appointed by agreement of the parties to the partition, and if they cannot agree, he is designated by the court.

The custodian of a document must on demand allow the use of the document to the other parties to the partition.

263.

As to an *iriaiken** which has the nature of co-ownership the provisions of this Section apply in addition to local customs.

264.

The provisions of this Section apply correspondingly where several persons hold a property right other than ownership, except as otherwise provided by law or ordinance.

CHAPTER IV.

SUPERFICIES.

265.

A superficiary has the right to use another person's land for the purpose of owning thereon structures or bamboos and trees.

266.

If a superficiary is bound to pay a fixed ground rent to the owner of the land, the provisions of Arts. 274-276 apply correspondingly.

Also the provisions as to hiring of things apply correspondingly to the rent.

---

* *Iriaiken* means generally a right held by a whole village to take wood or grass from certain land, especially forests. See also Art. 294.

267.

The provisions of Arts. 209-238 apply correspondingly to the relations between superficiaries or between a superficiary and the owner of the land; but the presumption mentioned in Art. 229 applies correspondingly to a superficiary only as to works which have been constructed after the creation of the superficies.

268.

If no time for the duration of a superficies has been fixed in the act by which it was created, and there is no special custom, the superficiary may surrender his right at any time; but if he is bound to pay a ground rent, he must give notice at least one year beforehand or pay one year's unaccrued rent.

If the superficiary does not surrender his right according to the provisions of the foregoing paragraph, the court may on the application of a party concerned fix the duration of the right at from twenty to fifty years, taking into consideration the kind and condition of the structures or bamboos and trees, as well as the circumstances existing at the time when the right was created.

269.

At the time of the termination of a superficies the superficiary, on restoring the land to its former condition, may take away his structures or bamboos and trees. But if the owner of the land gives notice that he desires to buy such things, and offers their present value, the superficiary cannot refuse such offer except for some just reason.

If there is a custom different from the provisions of the foregoing paragraph, such custom governs.

CHAPTER V.

EMPHYTEUSIS.

270.

An emphyteuta has a right to carry on agriculture or to rear animals on the land of another on payment of a rent.

271.

An emphyteuta must not make any change which will cause permanent damage to the land.

272.

An emphyteuta may assign his right to another person or may let the land for the purpose of agriculture or the rearing of animals within the duration of his right; unless that has been forbidden by the act of creation.

273.

As to the duties of an emphyteuta, in addition to the provisions of this Chapter and to any provisions contained in the act of creation, the rules relating to hiring of things apply correspondingly.

274.

Even though an emphyteuta suffers a loss as to the profits by *vis major,* he has no claim for the remission or reduction of his rent.

275.

If an emphyteuta because of *vis major* receives no profits at all for three consecutive years or more, or for five consecutive years or more receives only a profit which is less than his rent, he may surrender his right.

276.

If an emphyteuta fails to pay his rent for two consecutive years or is adjudged bankrupt, the land-

lord may claim the extinguishment of the emphyteusis.

277.

If there is any custom different from the provisions of the preceding six articles, such custom governs.

278.

The duration of an emphyteusis is from twenty to fifty years. If it is created for a longer period than fifty years, such period is reduced to fifty years.

The creation of an emphyteusis may be renewed, but not for more than fifty years from the time of renewal.

If the period of duration has not been fixed in the act of creation, it is, except so far as there is a different custom, to be thirty years.

The provisions of Art. 269 apply correspondingly to an emphyteusis.

CHAPTER VI.

SERVITUDES.

280.

The holder of a servitude has a right to apply another person's land to the benefit of his own land in accordance with the purpose specified in the act of creation; but he must not contravene those provisions of Chapter III, Section I which relate to public order.

281.

A servitude, being appurtenant to the ownership of the dominant land, is transferred with it and is the subject of other rights existing in the dominant land, unless otherwise provided in the act of creation.

A servitude cannot be assigned or made the subject of other rights apart from the dominant land.

282.

One co-owner of land cannot have a servitude existing for the benefit of or in such land extinguished as to his share.

If land is partitioned or a part of it assigned, the servitude exists for or in each part, unless it from its nature relates only to some particular part of the land.

283.

Only a continuous and visible servitude can be acquired by prescription.

284.

If one co-owner has acquired a servitude by prescription, it is also acquired by the other co-owners.

An interruption of prescription against co-owners is effective only if it is made against each co-owner who exercises the servitude.

If there are two or more co-owners exercising the servitude, even though there is a cause for the suspension of prescription as against one co-owner, prescription runs in favor of all.

285.

If on land subject to a servitude for the use of water there is not sufficient water for the requirements of the dominant and the servient land, the water is used first for domestic purposes and the remaining water for other purposes according to the requirements of each piece of land; but this rule does not apply if it has been otherwise provided by the act of creation.

If two or more servitudes for the use of water have been created in the same servient land, the holder of a later servitude cannot interfere with the use of the water by the holder of a prior servitude.

286.

If the owner of servient land takes upon himself, either by the act of creation or by special agreement, a duty to build or repair structures for the exercise of a servitude at his own expense, such duty devolves upon his singular successors.

287.

The owner of servient land may at any time free himself from the duty mentioned in the preceding article by abandoning to the holder of the servitude the ownership of such portion of the land as is necessary for the servitude.

288.

The owner of servient land may use structures put upon the servient land for the purposes of the servitude, but only so far as he does not thereby interfere with the exercise of the servitude.

In such case the owner of servient land must bear a part of the expense of the construction and preservation of the structures in proportion to the benefit accruing to him therefrom.

289.

If the possessor of servient land has exercised his possession under the conditions necessary for acquisitive prescription, the servitude is extinguished thereby.

290.

The extinctive prescription mentioned in the preceding article is interrupted by the holder of the servitude exercising his right.

291.

The period for extinctive prescription specified in Art. 167, 2 is computed, as to a discontinuous

servitude from the time when the holder exercised it last, and as to a continuous servitude from the time when a fact interfering with the exercise of the servitude occurred.

292.

When the dominant land belongs to two or more co-owners, if an interruption or suspension of the prescription occurs in favor of one of them, such interruption or suspension has effect also in favor of the other co-owners.

293.

If the holder of a servitude does not exercise a part of his right, such part only is extinguished by prescription.

294.

As to an *iriaiken** not having the nature of co-ownership, in addition to the custom of each locality, the provisions of this Chapter apply correspondingly.

CHAPTER VII.

POSSESSORY LIENS.

295.

If the possessor of a thing belonging to another has an obligation in his favor relating to the thing possessed, he may retain the thing until the obligation is performed; but this does not apply if the obligation is not yet due.

The provisions of the foregoing paragraph do not apply if the possession began by an unlawful act.

296.

A lienholder may exercise his right against the whole of the thing retained, until the obligation is wholly performed.

---

* See Art. 263.

297.

A lienholder may take the fruits of the thing retained and appropriate them to the performance of the obligation in preference to other creditors.

Such fruits must first be appropriated to the interest on the obligation, and if there is any surplus, that must be appropriated to the principal.

298.

A lienholder must possess the thing retained with the care of a good manager.

A lienholder cannot use or let the thing retained or give it as security without the consent of the debtor; but this does not apply to such use as is necessary for the preservation of the thing.

If a lienholder acts contrary to the provisions of the foregoing two paragraphs, the debtor may claim the extinguishment of the lien.

299.

If a lienholder incurs necessary expenses in respect to the thing retained, he may require the owner to reimburse him.

If a lienholder incurs beneficial expenses in respect to the thing retained, and an increase in the value of the thing therefrom remains in existence, he may require the owner to pay either the amount of the expenses or such increased value at the latter's option; but the court may on the application of the owner allow him a reasonable time for doing so.

300.

The exercise of a right of lien does not prevent the running of extinctive prescription of the obligation.

301.

The debtor may claim the extinguishment of the right of lien on giving proper security.

302.

A lien is extinguished by the loss of possession; but this does not apply to the case where the thing retained is let or pledged according to the provisions of Art. 298, 2.

CHAPTER VIII.

PREFERENTIAL RIGHTS.*

SECTION I.

GENERAL PROVISIONS.

303.

A holder of a preferential right has in accordance with the provisions of this Code or other laws, a right as to the property of his debtor to receive therefrom performance of an obligation due to him in preference to other creditors.

304.

A preferential right can also be exercised against money or other things which the debtor is to receive by reason of the sale, letting or loss of the thing forming the subject of the right or of damage to it; but the holder of the preferential right must have such money or thing seized before it is paid or delivered.

The same applies to the consideration for a real right which the debtor has created in the thing forming the subject of the preferential right.

305.

The provisions of Art. 296 apply correspondingly to preferential rights.

* These rights somewhat resemble what in English law are called equitable liens, but are not exactly the same.

SECTION II.

CLASSES OF PREFERENTIAL RIGHTS.

SUBSECTION I.

GENERAL PREFERENTIAL RIGHTS.

306.

A person in whose favor an obligation exists for any of the following causes has a preferential right in the whole property of the debtor:—

1. Expenses for the common benefit;
2. Funeral expenses;
3. Wages of employees;
4. Supplies of daily necessaries.

307.

The "preferential right on account of expenses for the common benefit" is for expenses incurred for the common benefit of all the creditors in regard to the preservation, liquidation or distribution of the debtor's property.

If any such expense was not incurred for the benefit of all the creditors, the preferential right only exists as against those creditors for whose benefit it was incurred.

308.

The "preferential right on account of funeral expenses" is for such funeral expenses as are accordant to the station in life of the debtor.

This preferential right exists also for such funeral expenses incurred by the debtor as are accordant to the station in life of a relative or a member of his house whom the debtor was bound to support.

309.

The "preferential right on account of wages of employees" is for wages due to an employee of the debtor for six months back; but the amount is limited to fifty yen.

310.

The „preferential right on account of supplies of daily necessaries" is for supplies for six months back of food, drink, wood, charcoal, oil and petroleum necessary for the living of the debtor, of his relatives and members of his house, who live with him and whom he is bound to support, and of his and their servants.

SUBSECTION II.

PREFERENTIAL RIGHTS IN MOVABLES.

311.

A person in whose favor an obligation exists for any of the following causes has a preferential right in particular movables of the debtor:—

1. Hiring of an immovable;
2. Lodging in an inn;
3. Transportation of travellers or goods;
4. Negligence of public officers in the performance of their functions;
5. Preservation of movables;
6. Sale of movables;
7. Supply of seeds, plants or manure;
8. Agricultural or industrial labor.

312.

The "preferential right on account of the hiring of an immovable" is for the hire of the immovable and for other obligations of the hirer arising from the relation of hiring, and is in the movable things of the hirer.

313.

The preferential right of the lessor of land is in such movables as have been brought upon the land leased or into buildings subservient to the use of such land, in such movables as are destined for the

use of such land in such fruits of the land as are in the possession of the lessee.

The preferential right of the lessor of a building is in such movables as have been brought into the building by the lessee.

314.

If a lease is assigned or sublet, the preferential right of the original lessor extends to the movables of the assignee or sublessee. The same applies to the money which the assignor or the sublessor is to receive.

315.

In case of a general liquidation of the property of the lessee the preferential right of the lessor is only for the rent and other obligations of the last preceding, the current and the next following term and for such damages as have arisen during the last preceding and the current term.

316.

If the lessor has received security money, he has a preferential right only for that portion of the obligation as to which he does not receive performance out of the security-money.

317.

The "preferential right on account of lodging in an inn" is for the charges for lodging, food and drink of a traveller, his suite and his cattle and horses, and is in the baggage which is in the inn.

318.

The "preferential right on account of transportation" is for charges for the carriage of a traveller or of goods and for incidental expenses, and is in all goods in the hands of the carrier.

319.

The provisions of Arts. 192-195 apply correspondingly to the preferential rights mentioned in the preceding seven articles.

320.

The "preferential right on account of security money of public officers" is for any obligation arising from a negligence of a public officer in the performance of his functions, and is in such security money.

321.

The "preferential right on account of the preservation of a movable" is for the expense of the preservation of a movable thing, and is in such thing.

This preferential right exists also for necessary expenses incurred for the purpose of having a right relating to a movable preserved, ratified or realized.

322.

The "preferential right on account of the sale of a movable" is for the purchase money of a movable and interest thereon, and is in such movable.

323.

The "preferential right on account of the supply of seeds, plants or manure" is for the price of seeds, plants or manure and interest thereon, and is in the fruits which have grown on the land for which those things have been used within one year after their use.

This preferential right is also for the supply of silkworm eggs or of mulberry leaves used for feeding the worms, and is in the things produced from such eggs and leaves.

324.

The "preferential right on account of agricultural and industrial labor" is as to a person who performed agricultural labor, for wages for one year back, and as to a person who performed industrial labor, for wages for three months back, and is in the fruits or manufactured things produced by his services.

SUBSECTION III.

PREFERENTIAL RIGHTS IN IMMOVABLES.

325.

A person in whose favor an obligation exists for any of the following causes has a preferential right in a particular immovable of the debtor:—

1. Preservation of an immovable;
2. Work done upon an immovable;
3. Sale of an immovable.

326.

The "preferential right on account of the preservation of an immovable" is for the expense of preservation of an immovable, and is in such immovable.

In the case of the foregoing paragraph the provisions of Art. 321, 2 apply correspondingly.

327.

The "preferential right on account of work done upon an immovable" is for the charges for work done upon an immovable of the debtor by a builder, a *gishi* or a contractor, and is in such immovable.

This preferential right exists only if there is an increase of the value of such immovable due to such work, and is only in such increased value.

328.

The "preferential right on account of the sale of an immovable" is for the purchase money and interest thereon, and is in such immovable.

SECTION III.

THE RANK OF PREFERENTIAL RIGHTS.

329.

When general preferential rights conflict, the rank of their precedence is according to the order in Art. 306.

When a general preferential right conflicts with a special preferential right, the latter takes precedence; but the preferential right on account of expenses for the common benefit takes precedence as against all creditors who are benefited thereby.

330.

When special preferential rights in the same movable conflict, the rank of their precedence is as follows:—

1. The preferential right on account of the hiring of an immovable, of lodging in an inn and of transportation;
2. The preferential right on account of the preservation of a movable; but if there are several persons entitled as preservers, a later preserver takes precedence of an earlier one;
3. The preferential right on account of the sale of a movable, of the supply of seeds, plants or manure, and of agricultural and industrial labor.

If a person who has a preferential right of the first rank knew at the time when he acquired his obligation that other persons had preferential rights

of the second or third rank, he cannot exercise his right of precedence against them. The same applies as against a person who has preserved a thing for the benefit of a person having a preferential right of the first rank.

As to fruits, a person who performed agricultural labor has the first rank, a supplier of seeds, plants or manure the second, and the lessor of the land the third.

331.

When special preferential rights in the same immovable conflict, the rank of their precedence is according to the order in Art. 325.

If successive sales have been made of the same immovable, the rank of precedence of the sellers as between themselves is according to the priority of the sales.

332.

When several persons have preferential rights of the same rank in the same thing, each is to receive performance in proportion to the amount of his obligation.

SECTION IV.

THE EFFECT OF PREFERENTIAL RIGHTS.

333.

A preferential right cannot be exercised in regard to a movable after the debtor has delivered the thing to a third acquirer.

334.

When a preferential right conflicts with a pledge of a movable, the pledgee has the same rights as the holder of a preferential right of the first rank mentioned in Art. 330.

335.

The holder of a general preferential right receives performance first out of property other than immovables, and only in case that is insufficient can he receive performance out of immovables.

As to immovables he must receive performance first out of such immovables as are not the subject of a special security.

If the holder of a general preferential right omits to intervene in a distribution according to the provisions of the foregoing two paragraphs, he cannot exercise his preferential right against a third person whose right is registered, to the extent of what he would have received through such intervention.

The provisions of the foregoing three paragraphs do not apply if the proceeds of an immovable are to be distributed before those of other property, or if the proceeds of an immovable which is the subject of a special security are to be distributed before the proceeds of other immovables.

336.

A general preferential right, even though not registered in respect to an immovable, may be set up against any creditor who has no special security; but this does not apply against a third person who has made registration.

337.

A "preferential right on account of the preservation of an immovable" retains its effect by being registered immediately after the act of preservation is completed.

338.

A "preferential right on account of work done upon an immovable" retains its effect by a provisional estimate of the cost being registered before the work has begun. If, however, the cost of the work

exceeds the provisional estimate, there is no preferential right for the excess.

The increase of value of an immovable arising from the work done upon it is to be estimated by experts appointed by the court at the time of the intervention in the distribution.

339.

A preferential right registered in accordance with the provisions of the preceding two articles can be exercised in preference to a mortgage.

340.

A "preferential right on account of the sale of an immovable" retains its effect by registering at the same time with the contract of sale the fact that the price or the interest thereon has not been paid.

341.

As to the effect of a preferential right, in addition to the provisions of this Section the provisions as to mortgages apply correspondingly.

CHAPTER IX.

PLEDGE.

SECTION I.

GENERAL PROVISIONS.

342.

A pledgee has a right to possess the thing which he has received from the debtor or from a third person as security for an obligation existing in his favor, and to receive performance out of it in preference to other creditors.

343.

A thing which is not assignable cannot be made the subject of a pledge.

344.

The creation of a pledge takes effect on the delivery to the creditor of the thing forming its subject.

345.

A pledgee cannot have the pledgor hold the possession of the thing pledged in his place.

346.

The pledge is security for the principle, interest and any penalty, for the costs of enforcement of the thing pledged and for damages arising from non-performance of the obligation or from latent defects in the thing pledged; except so far as it is otherwise provided in the act of creation.

347.

A pledgee is entitled to retain the thing pledged until he has received performance of the obligation mentioned in the preceding article; but he cannot set up this right against a creditor who has a right of precedence over him.

348.

A pledgee may on his own responsibility repledge the thing pledged within the time of the duration of his own right. In that case, however, he is also responsible for any damage caused to the thing by *vis major,* which would not have happened but for the repledge.

349.

A pledgor cannot, either by the act of creation or by an agreement made before the obligation is due, in order to make performance to the pledgee, agree

that the latter shall aquire the ownership of the thing pledged or shall dispose of it otherwise than in the manner determined by law.

350.

The provisions of Arts. 296-300 and of Art. 304 apply correspondingly to a pledge.

351.

A person who has created a pledge in order to give security for the obligation of another is entitled to recourse against the debtor according to the provisions relating to suretyship, if he has performed the obligation or has lost the ownership of the thing pledged in consequence of the enforcement of the pledge.

SECTION II.

THE PLEDGE OF MOVABLES.

352.

The pledgee of a movable cannot set up his pledge against a third person, unless he continues to hold possession of the thing pledged.

353.

If the pledgee of a movable has been deprived of the possession of the thing pledged, he can reclaim it only by an action for the recovery of possession.

354.

If an obligation existing in favor of the pledgee of a movable is not performed, he may, provided there is a reasonable ground for doing so, apply to the court to have the thing pledged appropriated forthwith for the performance according to a valuation by experts. In such case the pledgee must give previous notice of the application to the debtor.

355.

When several pledges have been created in the same movable as security for several obligations, the rank of such pledges is according to the priority of creation.

SECTION III.

THE PLEDGE OF IMMOVABLES.

356.

The pledgee of an immovable may use and take the profits of the immovable pledged in accordance with its established manner of use.

357.

The pledgee of an immovable is bound to pay the expenses of its management and to bear the charges upon it.

358.

The pledgee of an immovable cannot demand interest upon his obligation.

359.

The provisions of the preceding three articles do not apply if it is otherwise provided for by the act of creation.

360.

The duration of the pledge of an immovable may not exceed ten years. If a pledge in an immovable is created for a longer period, such period is to be reduced to ten years.

The creation of the pledge of an immovable may renewed, but for not more than ten years from the time of renewal.

361.

In addition to the provisions of this Section, the provisions of the next Chapter apply correspondingly to the pledge of immovables.

SECTION IV.

THE PLEDGE OF RIGHTS.

362.

A property right may be the subject of a pledge.

In addition to the provisions of this Section, the provisions of the last three Sections apply correspondingly to such a pledge.

363.

When an obligation for which a written instrument exists, is made the subject of a pledge, the creation of the pledge becomes effective by the delivery of such instrument.

364.

When an obligation in favor of a specified person is made the subject of a pledge, such pledge cannot be set up against a third debtor or any other third person, unless in accordance with the provisions of Art. 467 notice of the creation of the pledge has been given to the third debtor or he has consented thereto.

The provisions of the foregoing paragraph do not apply to name-shares.*

365.

If a name-debenture is made the subject of a pledge, such pledge cannot be set up against the company or against other third persons, unless the creation of the pledge is entered in the company's books in accordance with the provisions relating to the assignment of debentures.

366.

If an obligation to order is made the subject of a pledge, such pledge cannot be set up against third

* Name-shares, kimeikabushiki, are shares of stock in the certificates for which a person certain is named as creditor. See Commercial Code, Art. 150.

persons, unless its creation is endorsed upon the instrument.

367.

The pledgee may directly collect the obligation which is the subject of the pledge.

Where the subject of an obligation is money, the pledgee may collect only such portion as corresponds to the amount of his own obligation.

If the obligation pledged is due before the obligation in favor of the pledgee, the latter may require the third debtor to deposit the amount to be paid, in which case the pledge exists in the money deposited.

Where the subject of the obligation is not money, the pledgee has a right of pledge in the thing received in performance.

368.

In addition to the manner provided in the preceding article, a pledgee may enforce the pledge also by the means of compulsory execution provided in the Code of Civil Procedure.

CHAPTER X.

MORTGAGE.

SECTION I.

GENERAL PROVISIONS.

369.

A mortgagee has a right to receive, in preference to other creditors, performance of the obligation existing in his favor out of the immovable which the debtor or a third person, without transferring its possession, has given as security for the obligation.

A superficies and an emphyteusis can also be made the subject of a mortgage. In such case the provisions of this Chapter apply correspondingly.

370.

A mortgage extends to all things which are so connected with the immovable mortgaged as to form one thing with it, except buildings standing on mortgaged land. But this does not apply, if it is otherwise provided in the act of creation, or if the creditor has a right to cancel the act of the debtor according to the provisions of Art. 424.

371.

The provisions of the preceding article do not apply to fruits, except for the time after the immovable mortgaged has been seized, or after the notice specified in Art. 381 has been given to a third acquirer.

The proviso of the foregoing paragraph applies only if the seizure of the immovable mortgaged is made within one year after the third acquirer has received the notice mentioned in Art. 381.

372.

The provisions of Arts. 296, 304 and 351 apply correspondingly to mortgages.

SECTION II.

THE EFFECT OF A MORTGAGE.

373.

When mortgages have been created in the same immovable to secure several obligations, the rank of such mortgages is according to their respective times of registration.

374.

When a mortgagee has a right to demand interest or other periodical payments, he can exercise his mortgage only for the portion that is due for the last two years. If, however, in regard to former periodical payments a special registration has been made after they have fallen due the mortgage can be exercised from the time of such registration.

If the mortgagee has a right to claim damages for non-performance of the obligation, the provisions of the foregoing paragraph apply also to such portion for the last two years, but together with interest and other periodical payments the two years portion cannot be exceeded.

375.

A mortgagee may make his mortgage security for another obligation or may assign or waive it or its rank for the benefit of another creditor of the same debtor.

If in any such case the mortgagee has disposed of his mortgage in favor of several persons, the rights of the persons benefited by such disposal rank according to the respective times when additional entries have been made in the registry of the mortgage.

376.

If in any case mentioned in the preceding article the principal debtor has neither been notified according to the provisions of Art. 467 of the disposal of the mortgage nor has consented to it, such disposal cannot be set up against him, a surety, the mortgagor and a successor of any of them.

If the principal debtor has received such notice or has given his consent, a performance made without the consent of the person benefited by the disposal cannot be set up against such person.

377.

When a third person who has bought the ownership of, or a superficies in, an immovable mortgaged, pays the price to the mortgagee at the latter's request, the mortgage is extinguished in favor of such third person.

378.

A third person who has acquired the ownership of, or a superficies or emphyteusis in, an immovable mortgaged may under the provisions of Arts. 382-384 remove the mortgage by tendering and paying to the mortgagee a sum assented to by him or by depositing the same.

379.

The principal debtor, a surety or a successor of either of them cannot remove a mortgage.

380.

A third person who has acquired an immovable subject to a condition precedent cannot remove the mortgage while the condition is pending.

381.

If a mortgagee intends to enforce his mortgage, he must give previous notice thereof to the third acquirer mentioned in Art. 378.

382.

A third acquirer may remove a mortgage at any time before he receives the notice mentioned in the preceding article.

When the third acquirer has received the notice mentioned in the preceding article, he can remove a mortgage only on condition that he within one month makes the service specified in the next following article.

A third person who has acquired any of the rights mentioned in Art. 378 after the notice mentioned in Art. 381 has been given, can remove the mortgage only within the period within which the third acquirer mentioned in the foregoing paragraph can do so.

383.

When a third acquirer wishes to remove a mortgage, he must serve upon each registered creditor the following documents:—

1. A document specifying the cause and the date of the acquisition, the names, surnames and domiciles of the assignor and the acquirer, the nature and locality of the immovable mortgaged, the price and other payments chargeable to the acquirer;
2. A copy of the registry book, so far as it relates to the immovable mortgaged; but it is not necessary to insert therein registrations relating to rights already extinct;
3. A document stating that if the creditors have not in compliance with the provisions of the next following article within one month demanded the sale of the immovable by auction for the sake of obtaining a higher price, the third acquirer will in accordance with the rank of the obligations pay or deposit the price mentioned under No. 1 or an amount of money specially indicated.

384.

A creditor who does not within one month after having received the service mentioned in the preceding article demand a sale by auction for the sake of obtaining a higher price, is considered to have assented to the tender of the third acquirer.

The creditor must demand a sale by auction stating that he will himself buy the immovable mortgaged at a price of one tenth higher than that tendered by the third acquirer in case such price is not obtained at the auction.

In such case the creditor must give security for the purchase price and costs.*

385.

A creditor who demands a sale at auction for the sake of obtaining a higher price must within the period specified in the preceding article give notice thereof to the debtor and the assignor of the immovable mortgaged.

386.

A creditor who has demanded a sale by auction for the sake of obtaining a higher price can withdraw his demand only with the consent of the other registered creditors.

387.

If the mortgagee has not within the period specified in Art. 382 received from the third acquirer performance of the obligation or a notice for the removal of the mortgage, he may demand a sale by auction of the immovable mortgaged

388.

If the land and the buildings on it belong to the same owner, but the mortgage is on the land only or on the buildings only, the mortgagor is deemed to have created a superficies for the case of the sale by auction. In such case the ground rent is to be fixed by the court on the application of any party interested.

* An addition to this article has been made by Law, No. 67, of March 16 th, 1899, see Appendix.

389.

When a mortgagor after the creation of the mortgage has erected a building on the land mortgaged, the mortgagee may have such building sold with the land; but he can exercise his right of precedence only against the price obtained for the land.

390.

The third acquirer may bid at the auction.

391.

If the third acquirer has incurred necessary or beneficial expenses in respect to the immovable mortgaged, he has a prior claim for compensation out of the price of the immovable according to the distinctions stated in Art. 196.

392.

When a creditor has a mortgage on several immovables for the same obligation, if the price of all of them is to be distributed at the same time, the burden of the obligation is divided according to the respective values of such immovables.

If the price of only one of such immovables is to be distributed, the mortgagee may receive performance of his entire obligation from that price. In that case the mortgagee who is next in rank is subrogated to the prior mortgagee and may exercise the mortgage in his stead to the extent of the amount which the latter would have received from the other immovables according to the provisions of the foregoing paragraph.

393.

A person who exercises a mortgage by way of subrogation according to the provisions of the preceding article, may have a note of his subrogation added to the registry of the mortgage.

394.

A mortgagee is entitled to performance of his obligation from other property only for the portion he does not receive from the price of the immovable mortgaged.

The provisions of the foregoing paragraph do not apply if the price obtained for other property is to be distributed before the price of the immovable mortgaged; but in order to secure that the mortgagee receives payment according to the provisions of the foregoing paragraph any other creditor may demand that the amount which will come to him in the distribution shall be deposited.

395.

A contract of hiring of things which does not exceed the period fixed in Art. 602 may be set up against the mortgagee even though registered after the registration of the mortgage; but if such contract causes damage to the mortgagee, the court may on his application direct its rescission.

SECTION III.

THE EXTINCTION OF A MORTGAGE.

396.

As against the debtor and the mortgagor a mortgage is extinguished by prescription only at the same time with the extinguishmentt of the obligation secured by it.

397.

If a person other than the debtor or the mortgagor has possession of the immovable mortgaged under the requisites necessary for acquisitive prescription, the mortgage is extinguished thereby.

398.

Even though a person who has mortgaged a superficies or emphyteusis surrenders his right, such surrender cannot be set against the mortgagee.

BOOK III.

OBLIGATIONS*.

CHAPTER I.

GENERAL PROVISIONS.

SECTION I.

THE SUBJECT OF OBLIGATIONS.

399.

Even something not capable of being estimated in money can be made the subject of an obligation.

400.

When the subject of an obligation is the delivery of a specific thing, the debtor† must, until he delivers it, keep the thing with the care of a good manager.

401.

When the thing which forms the subject of an obligation is described only in kind, if its quality cannot be determined by the nature of the juristic act or the intention of the parties, the debtor must make prestation* of a thing of medium quality.

If in the case of the foregoing paragraph the debtor has completed all acts necessary for the prestation of a thing, or if he on obtaining the

* In this translation the word "obligation" is used in the sense of the Roman Law to denote the right of one party and the duty of the other.

† In this translation the words "creditor" and "debtor" are used to denote respectively the person subject to any kind of obligation and the person to whom it is owed, not as in English law only the parties to an obligation to pay money.

** The word *kyūfu suru,* used in the Japanese text is a translation of the German technical term *leisten* and the Latin *praestare.* Neither performance nor payment would express the same meaning, as will be clearly shown by Arts. 406, 410, 482, 488, 490 and 491. There may be, for instance, several prestations in order to make one performance, and there may be a prestation without the obligation being discharged thereby.

consent of the creditor has designated a thing for such prestation, such thing becomes from that time the subject of the obligation.

402.

If the thing forming the subject of an obligation is money, the debtor may at his option perform in any kind of currency, unless the subject of the obligation is prestation of some particular kind of currency.

If at the time of maturity of the obligation the particular kind of currency which forms its subject has lost its legal tender quality, the debtor must perform in some other currency.

The provisions of the foregoing two paragraphs apply correspondingly if the subject of an obligation is prestation of money in foreign currency.

403.

If the amount of an obligation is expressed in foreign currency, the debtor may perform in Japanese currency at the rate of exchange prevailing at the place of performance.

404.

If an obligation bears interest and there is no different intention expressed, the rate of interest is five per cent per annum.

405.

If the interest is in arrear for one year or more, and the debtor does not pay such interest upon the creditor's demand, the latter may add it to the principal.

406.

If the subject of an obligation is to be determined by selection from among several prestations, the right of selection belongs to the debtor.

407.

The right of selection mentioned in the preceding article is exercised by an expression of intention made to the other party.

Such expression of intention can be cancelled only with the assent of the other party.

408.

When an obligation comes due, if the party having the right of selection on being called upon by the other party to select within a proper time, does not do so within such time, the right of selection passes to the other party.

409.

If a third person is to make the selection, it is done by an expression of intention made either to the creditor or to the debtor.

If such third person cannot make the selection or is unwilling to do so, the right of selection passes to the debtor.

410.

If among the prestations which are to form the subject of an obligation one is from the beginning or afterwards becomes impossible, the obligation continues to exist as to the remaining prestations.

If a prestation becomes impossible by the fault of the party who has not the right of selection, the provisions of the foregoing paragraph do not apply.

411.

The effect of the selection relates back to the time when the obligation came into existence; but the rights of third persons cannot be impaired thereby.

SECTION II.

THE EFFECT OF OBLIGATIONS.

412.

If there is a certain term for the performance of an obligation, the debtor is *in mora** from the time when such term arrives.

If there is an uncertain term for the performance of an obligation, the debtor is *in mora* from the time when he knew that such time has arrived.

If no term is fixed for the performance of an obligation, the debtor is *in mora* after a demand for performance has been made upon him.

413.

If a creditor refuses to accept or cannot accept the performance of the obligation, he is *in mora* from the time when a tender of performance is made to him.

414.

If a debtor wilfully does not perform his obligation, the creditor may make a demand for compulsory performance to the court; except where the nature of the obligation does not admit of it.

When the nature of an obligation does not admit of compulsory performance, if the subject of the obligation is the doing of an act, the creditor may demand the court to have it done by a third person at the debtor's expense; but if the subject of the obligation is the doing of a juristic act, the decree of the court stands in the place of an expression of intention by the debtor.

As to an obligation whose subject is the forbearance from an act, the creditor may demand the court to have such acts as have been done undone

* *Mora* is the expression of the Roman Law for the condition of a party to an obligation who has failed to perform in time or to accept performance of the obligation in time.

at the debtor's expense and proper measures taken for the future.

The provisions of the foregoing three paragraphs do not affect the right to claim damages.

415.

If a debtor does not perform the obligation in accordance with its real meaning, the creditor may claim compensation for any damage caused thereby. The same is the case if the debtor becomes unable to perform for any cause attributable to him.

416.

The claim for damages is for compensation for such damage as usually arises from non-performance.

The creditor may demand compensation even for such damage as has arisen from special circumstances, if the party concerned foresaw or ought to have foreseen such circumstances.

417.

Unless a different intention has been expressed, the amount of the damages is assessed in money.

418.

If the fault of the creditor has contributed to the non-performance of the obligation, the court may take that into consideration in determining the liability for damages and their amount.

419.

The amount of damages for non-performance of an obligation whose subject is money is fixed according to the legal rate of interest; but if the interest agreed upon is higher than the legal rate, the former is to govern.

In regard to damages mentioned in the foregoing paragraph the creditor is not bound to prove the

damage, nor can the debtor set up the defence of *vis major.*

420.

The persons concerned may fix beforehand the amount of damages for non-performance of the obligation. In such case the court may not increase or reduce such amount.

A previous fixing of the amount of damages does not affect the right to claim performance or rescission. A penalty is presumed to be a previous fixing of the amount of compensation.

421.

The provisions of the preceding article apply correspondingly where the parties have agreed beforehand that something other than money shall be appropriated for the compensation of damage.

422.

When a creditor receives as damages the full value of the thing or right which forms the subject of the obligation, the debtor is subrogated by operation of law into the position of the creditor as to such thing or right.

423.

In order to preserve his obligation, the creditor may exercise the rights belonging to his debtor, except such as belong exclusively to the person of the debtor.

So long as his obligation is not yet due, the creditor can exercise the rights of his debtor only by virtue of a judicial subrogation; but this does not apply to acts of preservation.

424.

The creditor may demand the court to cancel any juristic act done by the debtor with knowledge

that it would prejudice his creditor; but this does not apply if the person enriched by such juristic act or a subsequent acquirer did not know, at the time of the act or of the acquisition, of the facts which would make it prejudicial to the creditor.

The provisions of the foregoing paragraph do not apply to a juristic act whose subject is not a property right.

425.

A cancellation made according to the provisions of the preceding article has effect for the benefit of all the creditors.

426.

The right of cancellation mentioned in Art. 424 is extinguished by prescription if the creditor does not exercise it for two years from the time when he had notice of the cause of cancellation. The same applies if twenty years have elapsed since the time of the act.

SECTION III.

OBLIGATIONS WITH A PLURALITY OF PARTIES.

SUBSECTION I.

GENERAL PROVISIONS.

427.

When there is a plurality of creditors or of debtors, if no different intention is expressed, each creditor or each debtor has rights or duties in an equal proportion.

SUBSECTION II.

INDIVISIBLE OBLIGATIONS.

428.

When the subject of an obligation is by its nature or by the expressed intention of the parties indivi-

sible, if there are several creditors, each creditor may demand performance on behalf of all the creditors, or the debtor may perform to any creditor on behalf of all the creditors.

429.

Even though there has taken place a novation* or a release† between one of the creditors on an indivisible obligation and the debtor, the other creditors may demand performance of the entire obligation; but so much as would have come to such creditor, if he had not lost his right, must be restored to the debtor.

Any other acts of one of the creditors on an indivisible obligation or any other facts occurring in respect to such one creditor have no effect as against the other creditors.

430.

If an indivisible obligation rests upon several persons, the provisions of the preceding article and those relating to joint obligations apply correspondingly, except the provisions of Arts. 434-440.

431.

When an indivisible obligation is changed into a divisible one, each creditor can demand performance and each debtor is bound to make performance only as to his share.

SUBSECTION III.

JOINT OBLIGATIONS.

432.

When several persons are bound by a joint obligation, the creditor may demand performance of the whole obligation or of a part thereof against

* See Art. 513 *et seq.* † See Art. 519 *et seq.*

any one of the debtors or against all the debtors at the same time or successively.

433.

If a cause of invalidity or cancellation of the juristic act exists as to one of the joint debtors, the effect of the obligation of the other debtors is not impaired thereby.

434.

A demand for performance made to one of the joint debtors is effectual against all the debtors.

435.

If a novation is made between one of the joint debtors and the creditor, the obligation is extinguished to the benefit of all of the debtors.

436.

When an obligation exists in favor of one of the joint debtors against the creditor, if such debtor makes a set off, the obligation is extinguished for the benefit of all the debtors.

So long as the joint debtor in whose favor the obligation exists, does not make a set off, the other joint debtors can make it only in respect to such debtor's share.

437.

A release of the obligation made to one of the joint debtors avails for the benefit of the other debtors only in respect to such debtor's share in the joint obligation.

438.

If confusion* takes place between one joint debtor and the creditor, it is deemed that such debtor has made performance.

* See Art. 520.

439.

If prescription has been completed for the benefit of one joint debtor, the other debtors also are freed from their liability for such debtor's share.

440.

With the exception of the facts mentioned in the preceding six articles, facts arising with respect to one joint debtor have no effect as to the other debtors.

441.

If all of the joint debtors or several of them are adjudged bankrupt, the creditor may intervene in the distribution of the assets of each for the full amount of his obligation.

442.

If one joint debtor makes performance of the obligation or otherwise at his own expense obtains the discharge of all the debtors from the obligation, he has a right of recourse against the other debtors for the amount of their respective shares.

Such recourse includes legal interest from the day of performance or of discharge, unavoidable expenses and other damages.

443.

When one joint debtor performs or otherwise at his own expense obtains the discharge of all the debtors from the obligation, without informing the other debtors of the demand of the creditor received by him, if any other debtor had a defence which he could have set up against the creditor, he may set it up against such debtor as to his share; but if he does so by way of set off, the debtor in fault may demand against the creditor the performance of the obligation which would have been extinguished by set off.

If one joint debtor omits to inform the other debtors that he has performed or otherwise at his own expense has obtained the discharge of all the joint debtors, and in consequence thereof another joint debtor in good faith makes performance to the creditor or otherwise for a consideration obtains a discharge from the obligation, such latter debtor may consider his performance or other act of discharge as effective.

444.

If one of the joint debtors has not the means to make restoration, the amount which he is unable to restore is apportioned among the person entitled to recourse and the other persons who have the means to perform according to their respective shares; but if the party entitled to recourse is in fault, he cannot require any contribution from the other debtors.

445.

When one of the joint debtors has been released from the joint obligation, if one among the other debtors has not the means to perform, the creditor takes upon himself that share which the debtor released by him ought to have borne in respect to the share which the debtor without means could not perform.

SUBSECTION IV.

SURETYSHIP.

446.

If the principal debtor does not perform his obligation, the surety must perform it.

447.

The suretyship covers interest, penalty and damages relating to the principal obligation and all other charges accessory to such obligation.

A surety may stipulate a penalty or an amount of damages in regard to his suretyship only.

448.

If the liability of a surety is more onerous than the principal obligation as to its subject or its modalities, it is reduced to the extent of the principal obligation.

449.

If a person who became surety for an obligation which is liable to be cancelled because of incapacity, had knowledge of the ground of cancellation at the time of the contract of suretyship, he is presumed to have entered into an independent obligation having the same object, conditioned upon the non-performance or cancellation of the principal obligation.

450.

When a debtor is bound to furnish a surety, the latter must have the following qualifications:—

1. He must have capacity;
2. He must have the means to perform;
3. He must have his domicile within the jurisdiction of the court appeal which has jurisdiction over the place where the obligation is to be performed, or he must establish a provisional domicile there.

If any of the qualifications mentioned under No. 2 or No. 3 of the foregoing paragraph no longer exists in a surety, the creditor may demand that another person having those qualifications be substituted for the surety.

The provisions of the foregoing two paragraphs do not apply if the surety has been designated by the creditor.

451.

If a debtor cannot furnish a surety having the qualifications mentioned in the preceding article, he may instead thereof give some other kind of security.

452.

When a creditor demands performance of the obligation from the surety, the latter may require that the principal debtor be first called upon to perform; unless the principal debtor has been adjudged bankrupt, or his whereabouts is unknown.

453.

Even after the creditor has called upon the principal debtor as provided in the preceding article, if the surety shows that the principal debtor has the means to perform and that execution would not be difficult, the creditor must first make execution against the property of the principal debtor.

454.

If a surety becomes bound jointly with the principal debtor, he has not the rights mentioned in the preceding two articles.

455.

If a creditor, disregarding a demand made by the surety according to the provisions of Arts. 452 and 453, omits to call upon or make execution against the principal debtor, and cannot afterwards obtain full performance from him, the obligation of the surety is discharged to the extent to which the creditor would have received performance if he had at once made such call or execution.

456.

When there are several sureties, the provisions of Art. 427 apply, even though they have assumed their obligations by separate acts.

457.

A demand for performance made upon the principal debtor and an interruption of prescription as against the principal debtor have effect also against a surety.

A surety may avail himself against the creditor by way of set off of any obligation which exists in favor of the principal debtor against the creditor.

458.

When the principal debtor is bound jointly with the surety, the provisions of Arts. 434-440 apply.

459.

A surety who has become such by virtue of a mandate of the principal debtor, if without his own fault he has been adjudged to perform to the creditor, or if in place of the principal debtor he has performed or otherwise has done an act to extinguish the obligation at his own expense, has a right of recourse against the principal debtor.

The provisions of Art. 442.2 apply correspondingly to the foregoing case.

460.

A surety who has become such by virtue of a mandate of the principal debtor may exercise beforehand his right of recourse against the principal debtor in the following cases:—

1. When the principal debtor has been adjudged bankrupt, and the creditor does not intervene in the distribution of his assets;
2. When the obligation becomes due; but a time granted to the principal debtor by the creditor after the contract of suretyship cannot be set up against the surety;
3. When the time of performance of the obligation is uncertain, and even the maximum

time cannot be ascertained after ten years have elapsed from the making of the contract of suretyship.

461.

A principal debtor who according to the provisions of the preceding two articles indemnifies the surety, may, so long as the creditor has not received full performance, require the surety to give him security or to procure his discharge from the obligation.

In the foregoing case the principal debtor may free himself from his obligation to indemnify the surety by making a deposit, by giving security or by procuring the discharge of the surety.

462.

When a person who has become surety without having received a mandate from the principal debtor, performs the obligation or otherwise at his own expense obtains the discharge of the principal debtor from his obligation, the latter is bound to indemnify the surety only to the extent to which he was enriched thereby at that time.

A person who has become surety against the will of the principal debtor, has a right of recourse only to the extent to which the principal debtor is presently enriched; but if the fact is asserted that the principal debtor before the time of the recourse had a cause for a set off against the creditor, the surety may demand against the creditor performance of the obligation which would have been extinguished by the set off.

463.

The provisions of Art. 443 apply correspondingly to a surety.

If a surety who has become such by virtue of a mandate of the principal debtor, has in good faith

made performance or otherwise incurred expenses for the sake of the performance of or the discharge from the obligation, the provisions of Art. 443 apply correspondingly to the principal debtor also.

464.

A person who has become surety for a joint debtor or for a debtor on an indivisible obligation, has a right of recourse against the other debtors only to the extent of their respective shares.

465.

If, because the principal obligation is indivisible, or because it is specially agreed that each surety shall be liable for the whole amount, one of several sureties has paid the whole amount or an amount exceeding his own share, the provisions of Arts. 442—444 apply correspondingly.

In a case other than the preceding case, if one of several sureties who are not jointly bound, has paid the whole amount or an amount exceeding his own share, the provisions of Art. 462 apply correspondingly.

SECTION IV.

ASSIGNMENT OF OBLIGATIONS.

466.

An obligation may be assigned, unless its nature does not admit of it.

The provisions of the foregoing paragraph do not apply if the parties have expressed a contrary intention. Such expression of intention, however, cannot be set up against third persons acting in good faith.

467.

The assignment of an obligation performable to a specific creditor can be set up against the debtor

or other third persons only if the assignor has given notice thereof to the debtor, or if the latter has assented to the assignment.

The notice or assent mentioned in the foregoing paragraph can be set up against a third person other than the debtor only if it is made by a document having an authenticated date.

468.

If a debtor has given the assent mentioned in the preceding article without reservation, he cannot set up against the assignee a defence which he might have made against the assignor. If, however, in order to extinguish the obligation, the debtor has made any payment to the assignor, he may recover it, or if for such purpose he has assumed an obligation to the assignor, he may treat it as if it did not exist.

If the assignor merely has given notice of the assignment, the debtor may set up against the assignee any defence which he had against the assignor before he received such notice.

469.

The assignment of an obligation performable to order can be set up against the debtor and other third persons only if the assignment is endorsed on the instrument, and the instrument itself is delivered to the assignee.

470.

The debtor on an obligation performable to order has the right, but is not bound, to verify the identity of the holder of the instrument and the genuineness of his signature or seal; but if the debtor acts in bad faith or with gross negligence, his performance is invalid.

471.

The provisions of the preceding article apply correspondingly if a creditor is designated in the instrument, but it is added that performance shall be made to the holder of such instrument.

472.

The debtor on an obligation performable to order cannot set up against any assignee in good faith defences which he might have set up against the original creditor, except such as appear upon the face of the instrument or result naturally from its character.

473.

The provisions of the preceding article apply correspondingly to obligations performable to bearer.

SECTION V.

EXTINGUISHMENT OF OBLIGATIONS.

SUBSECTION I.

PERFORMANCE.

474.

Performance of an obligation may be made by any third person, unless its nature does not admit of if or the parties concerned have expressed a contrary intention.

A third person who has no interest in the performance, cannot make performance against the will of the debtor.

475.

When a person has delivered by way of performance a thing belonging to another, he cannot recover it unless he makes another and valid performance.

476.

When an owner who has not capacity to assign, delivers a thing in performance, if the performance is cancelled, he cannot recover the thing unless he makes another and valid performance.

477.

If in the cases mentioned in the preceding two articles the creditor has in good faith consumed or assigned the thing received in performance, such performance is valid; but this does not prevent the creditor to take recourse against the person performing, if a third person has claimed damages from him.

478.

If performance is made to the quasi-possessor of an obligation, it is valid only if the person making performance acted in good faith.

479.

Except in the case mentioned in the preceding article, a performance made to a person who is not entitled to receive it, is valid only to the extent to which the creditor has been enriched thereby.

480.

A person who holds a receipt is deemed to have a right to receive performance; but this does not apply if the person making performance knows that such right does not exist or is ignorant thereof by reason of his negligence.

481.

If a third debtor who has received an order of prohibition of payment by the court performs to his own creditor, the creditor seizing may still claim

performance from the third debtor to the extent to which he has been damaged.

The provisions of the foregoing paragraph do not prevent the third debtor from exercising the right of recourse against his creditor.

482.

If a debtor with the consent of the creditor makes another prestation in place of that which he is bound to make, such prestation has the same effect as performance.

483.

If the subject of an obligation is the delivery of a specific thing, the person making performance must deliver the thing in the condition in which it is at the time when delivery is to be made.

484.

When there is no special expression of intention as to the place of performance, if a specific thing is to be delivered, the delivery is to be made at the place where the thing was at the time when the obligation arose; other kinds of performance must be made at the place of the creditor's actual domicile.

485.

When there is no special expression of intention as to the expenses of performance, such expenses are to be borne by the debtor; if, however, because of the creditor's transfer of his domicile or any other act of his the expenses are increased, such increase must be borne by the creditor.

486.

The person making performance may require the recipient of the performance to give him a receipt.

487.

If there are documents relating to the obligation, a person who has fully performed the obligation can require the surrender of such documents.

488.

When a debtor owes several obligations of the same kind to the same creditor, if the prestation tendered as performance is not sufficient to extinguish all obligations, the person performing may at the time of the prestation designate the obligation to which such performance shall be appropriated.

If the person performing does not make such designation, the person receiving the performance may at the time of reception appropriate such performance; but this does not apply if the person performing at once objects to such appropriation.

In the cases mentioned in the foregoing two paragraphs the appropriation of a performance is made by an expression of intention to the other party.

489.

If the parties do not appropriate the performance, the appropriation of it is made according to the following rules:—

1. If some of the obligations are due and some are not due, those which are due have precedence;
2. If all the obligations are due or all are not due, those have precedence whose performance is more advantageous to the debtor;
3. If the advantage of performance is equal for the debtor, those have precedence which first become due or will first become due;
4. If the performance of the obligations is equal in the respects mentioned under Nos. 2 and

3, the performance is to be appropriated among them in proportion to their respective amounts.

490.

When for the performance of a single obligation several prestations are to be made, if the person performing makes a prestation not sufficient to extinguish the whole of the obligation, the provisions of the preceding two articles apply correspondingly.

491.

When a debtor is bound in regard to one or several obligations to pay, besides the principal, interest and expenses, if the person performing makes a prestation not sufficient to extinguish the whole of the obligation, it must be appropriated in the following order: first expenses, then interest and lastly principal.

In the case of the foregoing paragraph the provisions of Art. 489 apply correspondingly.

492.

By a tender of performance a discharge is effected, from the time of the tender, from all responsibilities liable to arise out of non-fulfilment.

493.

A tender of performance must be accordant to the real meaning of the obligation, and must be actual; but if the creditor refuses beforehand to accept performance, or if it is necessary for the creditor to do any act in respect to the performance of the obligation, it is sufficient to give notice that all preparations for performance have been made, and to notify the creditor to accept performance.

494.

If the creditor refuses or is unable to accept performance, the person performing may obtain discharge from the obligation by depositing for the creditor's benefit the thing forming the subject of performance. The same applies if the person performing, without fault on his part, cannot ascertain who is the creditor.

495.

A deposit must be made to the deposit office of the place where the obligation is to be performed.

If there are no special provisions by law or ordinance as to deposit offices, the court must on the application of the person performing designate a deposit office and appoint a keeper of the thing deposited.

The depositor must without delay give notice of the deposit to the creditor.

496.

So long as the creditor has not accepted the deposit, or the judgment declaring the deposit valid has not become finally binding, the person performing may take back the thing deposited. In that case the deposit is deemed not to have been made.

The provisions of the foregoing paragraph do not apply if by the deposit a pledge or a mortgage has been extinguished.

497.

If the thing forming the subject of performance is not suitable for deposit, or if in regard to the thing there is an apprehension that it may perish or be destroyed or damaged, the person performing may with the permission of the court sell it at auction and deposit the proceeds. The same applies if the preservation of the thing would be too expensive.

498.

When the debtor is to perform upon a prestation being made by the creditor, the latter can receive the thing deposited only on condition that he makes such prestation.

499.

A person who has performed on behalf of a debtor may be subrogated into the position of the creditor on obtaining his consent at the time of performance.

In the case of the foregoing paragraph the provisions of Art. 467 apply correspondingly.

500.

If a person who has a rightful interest in performance makes performance, he is subrogated into the position of the creditor by operation of law.

501.

A person who according to the provisions of the preceding two articles is subrogated into the position of the creditor can, to the extent to which he might have recourse on the ground of his own right, exercise all the rights which the creditor had in respect to the effects of the obligation or to any security for it; but the following rules must be observed:—

1. A surety is not subrogated into the position of the creditor as against a third acquirer of an immovable which is the subject of a preferential right, pledge or mortgage, unless a note of the subrogation is added beforehand to the registration of the preferential right, pledge or mortgage;
2. A third acquirer is not subrogated into the position of the creditor as against a surety;
3. One third acquirer is subrogated into the position of the creditor as against other

third acquirers only in proportion to the value of each immovable;

4. The provisions mentioned under No. 3 apply correspondingly among persons who from their own property have given security for the obligation of another;
5. As between a surety and a person who from his own property has given security for the obligation of another, subrogation into the position of the creditor takes place only proportionally to the number of capita. If, however, there are several persons who from their own property have given security for the obligation of another, subrogation in regard to them can take place only in respect to the amount which remains after deducting the share to be borne by the surety, in proportion to the value of each property.

If in such case the properties are immovables, the provisions of No. 1 apply correspondingly.

502.

If subrogation takes place upon a part performance, the person subrogated exercises the right together with the creditor in proportion to the value given by him in performance.

In the case of the foregoing paragraph the creditor only is entitled to demand rescission of the contract for non-performance; but he must restore to the party subrogated the value given by the latter with interest.

503.

A creditor who has received full performance from a person who is thereupon subrogated into his position, must deliver to such person the documents relating to the obligation and all things which he holds as security.

If subrogation takes place upon a part performance, the creditor must note such subrogation upon the instrument relating to the obligation, and must permit the party subrogated to see to the preservation of the things which the creditor holds as security.

504.

If a third person is according to Art. 500 to be subrogated into the position of the creditor, and the latter intentionally or by omission has destroyed or diminished the security, such third person is discharged from his liability to the extent to which he is thereby prevented from getting reimbursement.

SUBSECTION II.

SET OFF.*

505.

If two persons are bound to each other by obligations whose subject is of the same kind and both of which are due, either debtor may be discharged from his obligation by set off to the extent to which the amounts of the obligations correspond, unless the nature of one of the obligations does not admit of it.

The provisions of the foregoing paragraph do not apply if the parties have expressed a contrary intention; but such intention cannot be set up against third persons acting in good faith.

506.

Set off is made by an expression of intention by one party to the other. A condition or time of commencement or ending cannot be added to such expression.

---

* *Compensatio* in Roman Law.

The expression of intention mentioned in the foregoing paragraph relates back in its effect to the time when both obligations could first have been set off one against the other.

507.

A set off may be made even though the place of performance of the two obligations is different; but the party who makes the set off must indemnify the other party for any damage caused thereby.

508.

A creditor may set off an obligation which is extinguished by prescription, if it could have been set off before its extinction.

509.

If an obligation arises from an unlawful act, the debtor cannot avail himself of a set off against the creditor.

510.

If the obligation is one the seizure of which is forbidden, the debtor cannot set it up by way of a set off against the creditor.

511.

A third debtor who has received from the court an order of prohibition of payment cannot set up against the seizing creditor by way of a set off an obligation subsequently acquired by him.

512.

The provisions of Arts. 488—491 apply correspondingly to set off.

SUBSECTION III.

NOVATION.*

513.

When the parties make a contract by which material elements of an obligation are changed, such obligation is extinguished by novation.

It is deemed a change of a material element of the obligation if a conditional obligation is made unconditional, if a condition is added to an unconditional obligation, or if a condition is changed. The same is the case if a bill of exchange is issued instead of performance of the obligation.

514.

Novation by a change of the debtor may be accomplished by a contract between the creditor and the new debtor, but not against the will of the original debtor.

515.

Novation by a change of the creditor can be set up against a third person only if made by a document having an authenticated date.

516.

The provisions of Art. 468, 1 apply correspondingly to a novation by a change of the creditor.

517.

If the obligation arising from a novation, because of an illegality in its ground or for some cause which was unknown to the parties, does not come into existence or is cancelled, the original obligation is not extinguished.

518.

The parties to a novation may, to the extent of the subject of the original obligation, transfer a

* *Novatio* in Roman Law.

right of pledge or mortgage given as security for it to the new obligation; but if such security was given by a third person, his consent is necessary.

SUBSECTION IV.

RELEASE.

519.

If the creditor expresses to the debtor an intention to release the obligation, it is extinguished.

SUBSECTION V.

CONFUSION.†

520.

If rights and duties in an obligation become vested in the same person, the obligation is extinguished. But this does not apply if such obligation forms the subject of the right of a third person.

CHAPTER II.

CONTRACTS.

SECTION I.

GENERAL PROVISIONS.

SUBSECTION I.

THE EXISTENCE OF A CONTRACT.

521.

An offer to make a contract in which a period for acceptance is specified, cannot be withdrawn.

If the offerer does not receive notice of acceptance within the period specified, the offer loses its effect.

† *Confusio* in Roman Law.

522.

Even though notice of acceptance arrives only after the period specified in the preceding article, if the offerer ought to know that it was sent in such time that in the ordinary course of things it ought to have arrived within that period, the offerer, unless he has already done so before the arrival of the notice of acceptance, must without delay give notice to the other party of the delayed arrival.

If the offerer omits to give the notice mentioned in the foregoing paragraph, the notice of acceptance is deemed not to have been delayed.

523.

The offerer may treat a delayed acceptance as a new offer.

524.

A person who, without specifying a period for acceptance, makes an offer to another at a distance cannot withdraw his offer within a time within which notice of acceptance might reasonably be expected.

525.

The provisions of Art. 97, 2 do not apply if the offerer has expressed a contrary intention, or if the other party had notice of the fact of his death or loss of capacity.

526.

A contract between persons at a distance comes into existence at the time when the notice of acceptance is sent.

If according to the expressed intention of the offerer or to a custom prevailing in business no notice of acceptance is necessary, the contract comes into existence at the time of the occurence of any fact which may be considered as an expression of intention to accept.

527.

Even though notice of the withdrawal of an offer arrives after notice of acceptance has been sent, if the acceptor ought to know that the former was sent in such time that in the ordinary course of things it ought to have arrived before, the acceptor must without delay give notice to the offerer of such delayed arrival.

If the acceptor omits to give the notice mentioned in the foregoing paragraph, the contract is deemed not to have come into existence.

528.

If a person who accepts an offer adds a condition to it or changes it, he is deemed to have refused such offer and at the same time to have made a new offer.

529.

A person who publicly advertises that he will give a certain reward to whoever shall do a certain act, is bound to give such reward to the person who does the act.

530.

In the case of the preceding article the advertiser may as long as there is nobody who has completed the specified act, withdraw his advertisement by the same means which he used for advertising, unless he has declared in the advertisement that he would not withdraw it.

If an advertisement cannot be withdrawn by the means aforesaid, withdrawal may be made by other means, but in such case it is valid only as against those persons who know of it.

If the advertiser has fixed a period within which the specified act must be done, he is presumed to have renounced his right of withdrawal.

531.

If there are several persons who have done the act specified in the advertisement, only that one who does it first has a right to receive the reward.

If several persons do such act at the same time, each one has a right to receive an equal share of the reward. But if the reward is by its nature unsuited to be divided, or if according to the advertisement only one person can receive it, the person to receive it is determined by lot.

The provisions of the foregoing two paragraphs do not apply if in the advertisement a different intention is expressed.

532.

If there are several persons who have done the act specified in the advertisement, but only the one who has done it best is to receive the reward, such advertisement has effect only if a period is fixed therein for the competition.

In the case mentioned in the foregoing paragraph the decision which of the persons who have taken part in the competition has done so the best, is made by the person designated in the advertisement, and if no such person is designated, by the advertiser.

The persons who have taken part in the competition cannot make objections to such decision.

If it is decided that several persons have done the act equally well, the provisions of Art. 531, 2 apply correspondingly.

SUBSECTION II.

THE EFFECT OF A CONTRACT.

533.

A party to a bilateral contract may refuse to perform his obligation until the other party tenders

performance of his obligation, but this does not apply if the other party's obligation is not yet due.

534.

If the object of a bilateral contract is the creation or transfer of a real right in a specific thing, and such thing is lost or damaged by a cause not attributable to the debtor, the loss or damage falls upon the creditor.

To a non-specific thing the provisions of the foregoing paragraph apply from the time when the thing has become specific in accordance with the provisions of Art. 401, 2.

535.

The provisions of the preceding article do not apply if the thing which forms the subject of a bilateral contract depending upon a condition precedent is lost while the condition is pending.

If the thing is damaged by a cause not attributable to the debtor, the damage falls upon the creditor.

If the thing is damaged by a cause attributable to the debtor, the creditor, when the condition is fulfilled, may at his option demand either performance of the contract or its rescission. But his right to damages is not affected thereby.

536.

Except in the cases mentioned in the preceding two articles, if an obligation becomes impossible of performance by a cause not attributable to either party, the debtor has no right to receive the counter-prestation.

If performance becomes impossible by a cause attributable to the creditor, the debtor does not

lose his right to the counter-prestation; but if he has received any benefit from being discharged from his obligation, he must surrender it to the creditor.

537.

If a party by a contract agrees to make a prestation to a third person, the latter has a right to claim such prestation directly from the debtor.

In the case of the foregoing paragraph the right of the third person comes into existence at the time when he expresses to the debtor his intention to take the benefit of the contract.

538.

After the right of the third person has come into existence in accordance with the provisions of the preceding article, it cannot be changed or extinguished by the parties to the contract.

539.

Defences based upon the contract mentioned in Art. 537 can be set up by the debtor against the third person who is to receive the benefit of the contract.

SUBSECTION III.

THE RESCISSION OF A CONTRACT.

540.

If by contract or by the provisions of law one party has the right of rescission, such rescission is made by an expression of intention to the other party.

The expression of intention mentioned in the foregoing paragraph cannot be cancelled.

541.

If one party does not perform his obligation, the other party may fix a reasonable period and notify him to perform within that period. If he does not perform within that period, the other party may rescind the contract.

542.

If the object of a contract according to its nature or to an intention expressed by the parties can be accomplished only by performance at a fixed time or within a fixed period, and such time or period has passed without one of the parties having performed, the other party may forthwith rescind the contract without the notification mentioned in the preceding article.

543.

If performance becomes wholly or partly impossible by a cause attributable to the debtor, the creditor may rescind the contract.

544.

If one party consists of several persons, rescission of the contract can be made only by or against all of them.

If in the case of the foregoing paragraph the right of rescission is extinguished as to one of them, it is extinguished also as to the others.

545.

If one party has exercised his right of rescission, each party is bound to restore the other to his original condition; but the rights of third persons cannot be impaired.

To money which is to be repaid in the case of the foregoing paragraph interest must be added from the time when it was received.

The exercise of the right of rescission does not affect a claim for damages.

546.

The provisions of Art. 533 apply correspondingly to the case mentioned in the preceding article.

547.

If no period is fixed for the exercise of the right of rescission, the other party may fix a reasonable period and notify the party having a right of rescission to answer definitely within such period whether he will rescind or not. If notice of rescission is not received within such period, the right of rescission is extinguished.

548.

If by his own act or fault the person having a right of rescission materially damages the thing forming the subject of the contract or becomes unable to restore it, or if by working up or making* over the thing, he changes it into a thing of a different kind, the right of rescission is extinguished.

If without the act or fault of the person having a right of rescission, the thing forming the subject of the contract is lost or damaged, the right of rescission is not extinguished.

SECTION II.

GIFT.†

549.

A gift is where one party expresses his intention to give property of his own to the other party without consideration, and the other party accepts it.

* See Art. 276. † *Donatio* in Roman Law.

550.

A gift not expressed in writing can be cancelled by either party, except such part as to which performance has already been completed.

551.

The donor is not liable for defects or deficiencies in the thing or right forming the subject of the gift, unless he knew of such defect or deficiency and did not inform the donee thereof.

In case of a gift subject to a charge the warranty of the donor is the same as that of a seller to the extent of the charge.

552.

A gift whose subject are periodical prestations, ceases to have effect on the death of either the donor or the donee.

553.

To a gift subject to a charge the provisions relating to bilateral contracts apply in addition to those of this Section.

554.

A gift to take effect at the death of the donor is governed by the provisions relating to legacies.

SECTION III.

SALE.*

SUBSECTION I.

GENERAL PROVISIONS.

555.

A sale is where one party agrees to transfer a property right to the other party, and the other party agrees to pay him a price for it.

* *Emtio venditio* in Roman Law.

556.

A promise to buy or sell made by one party has the effect of a sale, as soon as the other party expresses his intention to complete the sale.

If no time is fixed for such expression of intention, the person who made a promise may fix a reasonable time and notify the other party to give a definite answer within that time whether he will complete the sale or not. If within that period he does not give any definite answer, the promise loses its effect.

557.

When the buyer has given bargain money to the seller, the contract may up to the time when one of the parties commences to fulfil it, be rescinded by the buyer on renouncing the bargain money and by the seller on repaying twice its amount.

In the case of the foregoing paragraph the provisions of Art. 545, 3 do not apply.

558.

The expenses of a contract of sale are to be borne by both parties equally.

559.

The provisions of this Section apply correspondingly to contracts other than sales, made upon a consideration, unless the nature of the contract does not admit of it.

SUBSECTION II.

THE EFFECT OF A SALE.

560.

If a right of another person is made the subject of a sale, the seller is bound to acquire such right and transfer it to the buyer.

561.

If in the case falling under the preceding article the seller is not able to acquire and to transfer to the buyer the right which he has sold the latter may rescind the contract; but if he knew at the time of the contract that the right did not belong to the seller, he cannot claim damages.

562.

If a seller who at the time of the contract did not know that the right which he sold was not his, is not able to acquire and transfer it to the buyer, he may rescind the contract on paying damages.

If in the case of the foregoing paragraph the buyer knew at the time of the sale that the right which he bought did not belong to the seller, the latter may rescind the contract by merely informing the buyer that he is unable to transfer the right sold.

563.

If because a part of the right which is the subject of the sale belongs to another, the seller is not able to transfer it to the buyer, the latter may claim a reduction from the price in proportion to the part that is lacking.

If in the case of the foregoing paragraph the buyer would not have bought the remaining part alone, he may rescind the contract, provided he acted in good faith.

A demand for a reduction from the price or a rescission of the contract does not affect the claim for damages of a buyer acting in good faith.

564.

The rights provided for in the preceding article must be exercised within one year, which is comput-

ed, if the buyer acted in good faith, from the time when he first had notice of the fact, and if he acted in bad faith, from the time of the contract.

565.

The provisions of the preceding two articles apply correspondingly where things sold with an indication of their number and quantity are insufficient, or where a part of the thing sold had already perished at the time of the contract, provided the buyer had no notice of such insufficiency or loss.

566.

If a thing sold is subject to a superficies, emphyteusis, servitude, possessory lien or pledge, of which the buyer did not have notice, he may rescind the contract, provided that because of such incumbrance the object for which the contract was made, cannot be accomplished. Otherwise he can only claim damages.

The provisions of the foregoing paragraph apply correspondingly if a servitude which is represented to exist in favor of the immovable sold does not exist, or if a registered lease of such immovable exists.

In the case of the foregoing two paragraphs the rescission of the contract or the claim for damages must be made within one year from the time when the buyer has notice of the fact.

567.

If the buyer loses the ownership of the immovable sold by reason of the exercise of a preferential right or a mortgage which existed in such immovable, he may rescind the contract.

If the buyer has preserved his ownership by making expenditures, he may claim reimbursement for such expenditures against the seller.

If in any such case the buyer has suffered damage, he may claim compensation.

568.

The highest bidder at an executory sale by auction may in accordance with the provisions of the preceding seven articles, rescind the contract or claim reduction from the price against the debtor.

If in the case of the foregoing paragraph the debtor is without means, the highest bidder may demand from the creditors to whom the proceeds have been distributed the restoration of the whole or a part of such proceeds.

If in the case of the foregoing two paragraphs the debtor knew of the deficiency in the thing or right and did not report it, or if the creditors knew of such deficiency when they demanded the auction, the highest bidder may claim damages from the persons in fault.

569.

If the seller of an obligation warrants the solvency of the debtor, it is presumed that the warranty is of such solvency at the time of the contract.

If the seller of an obligation not yet due warrants the future solvency of the debtor, it is presumed that the warranty is of such solvency at the day of performance.

570.

If the thing sold has a latent defect, the provisions of Art. 566 apply correspondingly; but this does not apply to an executory sale by auction.

571.

The provisions of Art. 533 apply correspondingly to the cases mentioned in Arts. 563—566 and in the preceding article.

572.

Even though a seller has specially stipulated that he will not assume the warranty as determined in the preceding twelve articles, he is not exempted from liability for facts which he knew of and did not report or for rights which he himself has created for the benefit of, or has assigned to, a third person.

573.

If a time is fixed for the delivery of a thing sold, it is presumed that the same time is fixed for the payment of the price.

574.

If the price payable simultaneously with the delivery of the thing sold, it must be paid at the place of the delivery.

575.

The fruits of a thing sold but not yet delivered belong to the seller.

The buyer is bound to pay interest on the price from the day of delivery; but if a time is fixed for the payment of the price, he need not pay interest until such time arrives.

576.

When there is an apprehension that the buyer may lose wholly or partly the right which he has bought because a person asserts a right to the subject of the sale, the buyer may refuse to pay the price wholly or partly according to the extent of the threatened loss; unless the seller gives proper security.

577.

If a preferential right, a pledge or a mortgage is registered in regard to an immovable bought, the buyer may refuse to pay the price until the proceed-

ings for the removal* of the encumbrance are finished; but the seller may require the buyer to proceed with such removal without delay.

578.

In the cases mentioned in the preceding two articles the seller may require the buyer to deposit the price.

SUBSECTION III.

REPURCHASE†

579.

The seller of an immovable may in pursuance of a special agreement of repurchase made at the same time as the contract of sale rescind the sale on repaying the price and the expenses of the contract paid by the buyer. Unless the parties have expressed a different intention, the fruits of the immovable and the interest on the purchase price are deemed to have been set off against each other.

580.

The duration of a right to repurchase cannot exceed ten years. If a longer period is fixed, it is reduced to ten years.

If a period for repurchase has been fixed, it cannot be afterwards extended.

If no period for repurchase has been fixed, it must be made within five years.

581.

If a special agreement for repurchase has been registered at the same time as the contract of sale, the right of repurchase has also effect as against third persons.

---

* See Art. 378. † *Pactum de retroemendo* in Roman Law.

The registered right of a lessee can be set up against the seller only for one year of its remaining duration, and not even for that if the contract of lease was made for the purpose of injuring the seller.

582.

When a creditor of the seller wants to make repurchase in the place of the seller according to the provisions of Art. 423, the buyer may have the right of repurchase extinguished by performing the obligation of the seller up to such amount as remains after deducting the amount to be repaid by the seller from the actual value of the immovable as assessed by an expert appointed by the court, and by repaying the surplus, if any, to the seller.

583.

If the seller does not tender the price and the expenses of the contract within the period fixed, he cannot repurchase.

If the buyer or a subsequent acquirer has made expenditures upon the immovable, the seller must make reimbursement for them according to the provisions of Art. 196. In the case of beneficial expenditures the court may on the application of the seller allow him a reasonable time for reimbursement.

584.

If a co-owner of an immovable has sold his share with a special agreement for repurchase, and afterwards the immovable is partitioned or sold at auction, the seller may exercise his right of repurchase against the share or price which the buyer has received or is to receive. If partition or auction has taken place without notice being given to the seller, such fact cannot be set up against him.

585.

If in the case mentioned in the preceding article the buyer has bought the immovable at auction, the seller may repurchase it on repaying the auction price and the expenses mentioned in Art. 583. In such case the seller acquires the ownership of the whole of the immovable.

If the other co-owners have demanded partition and thereupon the buyer has bought the thing at auction, the seller cannot make repurchase as to his share only.

SECTION IV.

EXCHANGE.*

586.

Exchange is where the parties agree to transfer to each other property rights other than the ownership of money.

If one party agrees to transfer, in addition to another right, also the ownership of money, the provisions as to purchase-price apply correspondingly to such money.

SECTION V.

LOANS FOR CONSUMPTION.†

587.

A loan for consumption is where one party receives from the other money or other things, and agrees to return things of the same kind, quality and quantity.

588.

When a person otherwise than by a loan is bound to make a prestation of money or other things, and the parties agree to make such things the subject

* *Rerum permutatio* in Roman Law.

† *Mutuum* in Roman Law.

of a loan for consumption, a loan for consumption is deemed to have come into existence thereby.

589.

A promise of a loan for consumption loses its effect if subsequently either party is adjudged bankrupt.

590.

If in the case of a loan for consumption upon interest the thing has a latent defect, the lender must furnish in its place a thing free from defects. A claim for damages, however, is not affected thereby.

In the case of a loan for consumption without interest, the borrower may return the value of the defective thing. If, however, the lender knew of the defect and did not inform the borrower thereof, the provisions of the foregoing paragraph apply correspondingly.

591.

If no time for the return has been fixed by the parties, the lender may fix a reasonable time and give notice to the borrower to return within that time.

The borrower may return at any time.

592.

If it becomes impossible for the borrower to return according to the provisions of Art. 587, he must pay as compensation the value which the thing has at such time; but this does not apply to the case mentioned in Art. 402, 2.

SECTION VI.

LOANS FOR USE *

593.

A loan for use is where one party receives a thing without consideration from the other, agreeing to return it after having used and taken the profits of it.

594.

The borrower must use and take the profits of the thing in accordance with its manner of use as fixed by the contract or by the nature of the thing lent.

The borrower cannot without the consent of the lender have a third person use or take the profits of the thing lent.

If the borrower makes use or takes the profits of the thing lent in contravention of the provisions of the foregoing two paragraphs, the lender may rescind the contract.

595.

The borrower must bear the ordinary necessary expenses in regard to the thing lent.

As to other expenses the provisions of Art. 583, 2 apply correspondingly.

596.

The provisions of Art. 551 apply correspondingly to loans for use.

597.

The borrower must restore the thing lent at the time fixed by the contract.

If the parties have not fixed a time for the restoration, the borrower must restore the thing after he has finished using and taking the profits of it for the purpose specified in the contract; but even before that time the lender may claim restora-

* *Commodatum* in Roman Law.

tion of the thing as soon as a time reasonably sufficient for using and taking profits of the thing has elapsed.

If the parties have not fixed a time for restoration nor specified the purpose of the use and taking profits, the lender may claim restoration at any time.

598.

The borrower may take away any thing which he has attached to the thing lent, putting the latter back into its former condition.

599.

A loan for use loses its effect by the death of the borrower.

600.

Compensation for damage arising from any use or taking profits of the thing contrary to the main object of the contract, and reimbursement for expenses incurred by the borrower, must be claimed within one year from the time when the thing was restored to the lender.

SECTION VII.

THE HIRING OF THINGS.*

SUBSECTION I.

GENERAL PROVISIONS.

601.

The hiring of a thing is where one party agrees to let the other use and take profits of a thing, and the other party agrees to pay a rent† therefor.

* *Locatio conductio rerum* in Roman Law.

† The word "rent" is used to denote the price of the hiring of either immovables or movables.

602.

If a person who has not disposing capacity or authority makes a contract of hiring, such hiring cannot be for longer than the following periods:—

1. In case of the hiring of forest land for the purpose of planting or cutting trees, ten years;
2. In case of the hiring of other land, five years;
3. In case of the hiring of buildings, three years;
4. In case of the hiring of movables, six months.

603.

The periods mentioned in the preceding article may be renewed, but such renewal must be made as to land within one year, as to buildings within three months, and as to movables within one month before the period expires.

604.

The period of duration of a hiring cannot exceed twenty years. If a hiring is made for a longer period, such period is to be reduced to twenty years.

The aforesaid period may be renewed; but it must not exceed twenty years from the time of the renewal.

SUBSECTION II.

THE EFFECT OF THE HIRING OF THINGS.

605.

If the hiring of an immovable is registered, it has effect against any person who afterwards acquires a real right in the immovable.

606.

The letter is bound to make all repairs necessary for the use and taking profits of the thing hired.

The hirer cannot refuse permission if the letter desires to do an act necessary to the preservation of the thing hired.

607.

If the letter desires to do against the will of the hirer an act of preservation by reason of which it would be impossible for the hirer to accomplish the object of the hiring, the hirer may rescind the contract.

608.

If the hirer has incurred necessary expenses in respect to the thing hired, which ought to have been borne by the letter, he may forthwith claim reimbursement for them.

If the hirer has incurred beneficial expenses, the letter must make reimbursement after the hiring has ended in accordance with the provisions of Art. 196, 2; but the court may on the application of the letter allow a reasonable time to do so.

609.

If a hirer of land the object of which is the taking of profits, because of *vis major* obtains from it less profits than the amount of the rent, he may claim to have the rent reduced to the amount of the profits which he has made; but this does not apply to the hire of residential land.

610.

If in the case mentioned in the preceding article the hirer because of *vis major* obtains from the land for two consecutive years or longer less than the amount of the rent, he may rescind the contract.

611.

If a part of the thing hired is lost without the fault of the hirer, he may claim that the rent be reduced in proportion to the part lost.

If in such case the hirer cannot with the remaining part accomplish the purpose for which he entered into the contract of hiring, he may rescind it.

612.

A hirer can assign his right or sublet the thing hired only with the assent of the letter.

If the hirer contrary to the provisions of the foregoing paragraph has let a third person use or take the profits of the thing, the letter may rescind the contract.

613.

If the hirer rightfully sublets the thing hired, the subhirer is directly responsible to the letter. In such case a payment of the rent made in advance cannot be set up against the letter.

The provisions of the foregoing paragraph do not prevent the letter from exercising his right against the hirer.

614.

The rent is to be paid, as to movables, buildings and residential land at the end of each month, as to other land at the end of each year; for things, however, for which there is a season for the harvest, it must be paid without delay after such season.

615.

If the thing hired needs to be repaired, or if there is a person asserting a right to it, the hirer must without delay give notice thereof to the letter, unless the latter has already knowledge thereof.

616.

The provisions of Art. 594, 1, 597, 1 and 598 apply correspondingly to the hiring of things.

SUBSECTION III.

THE TERMINATION OF A HIRING OF THINGS.

617.

If the parties have not fixed a period of duration for the contract of hiring, either party may at any time give notice to terminate it, in which case the hiring comes to an end after the following periods have elapsed from the time when notice was given:

1. As to land, one year;
2. As to buildings, three months;
3. As to rooms to let and movables, one day.

In the case of land for which there is a season for the harvest, a notice to terminate the contract must be given after such season and before the commencement of the next cultivation.

618.

Even though the parties have fixed a period of duration for the contract of hiring, if one or both of the parties have reserved the right to terminate it within that period, the provisions of the preceding article apply correspondingly.

619.

When after the period of hiring has expired, the hirer continues to use or take the profits of the thing hired, if the letter knowing thereof does not object, it is presumed that the parties have made a new contract of hiring on the same terms as those of the former contract; but either party may give notice to terminate it in accordance with the provisions of Art. 617.

If security has been given upon the former contract, it is extinguished by the expiration of the period; but this does not apply to money deposited as security for the payment of rent.

620.

The rescission of a contract of hiring takes effect only as to the future; but this does not affect a claim for damages against any party who has been in fault.

621.

When a hirer is adjudged bankrupt, the letter or the administrator in bankruptcy may, even though the duration of the hiring was fixed, give notice according to Art. 617 to terminate the contract. In that case neither party can claim compensation from the other party for damage arising from such termination.

622.

The provisions of Art. 600 apply correspondingly to the hiring of things.

SECTION VIII

THE HIRING OF SERVICES.*

623.

A hiring of services is where one party agrees to render services to the other party, and the latter agrees to pay him a remuneration.

624.

The person hired can claim the remuneration only after he has finished rendering the services.

A remuneration determined by periods can be demanded at the end of each period.

625.

The hirer can assign his right to a third person only with the consent of the person hired.

---

* *Locatio conductio operarum* in Roman Law.

The person hired can have a third person render the services in his place only with the consent of the hirer.

If the person hired has a third person render the services contrary to the provisions of the foregoing paragraph, the hirer may rescind the contract.

626.

If the duration of a hiring is to be for more than five years or for the life time of one of the parties or of a third person, either party may at any time after the expiration of five years rescind the contract; but as to apprentices in a commercial or industrial business such term is ten years.

A person who desires to rescind a contract according to the provisions of the foregoing paragraph must give notice three months beforehand.

627.

When the parties have not fixed the duration of the hiring, either party may at any time give notice to terminate it, in which case it comes to an end two weeks after such notice.

If the remuneration is determined by periods, notice to terminate the contract may be given for the next following period, such notice, however, to be made in the first half of the current period.

If the remuneration is determined by periods of six months or longer, the notice mentioned in the foregoing paragraph must be given three months beforehand.

628.

Even though the duration of the hiring has been fixed by the parties, either party may immediately rescind the contract for any unavoidable cause. If, however, such cause has arisen by the fault of one

of the parties, he is liable for damages to the other party.

629.

If after the expiration of the period of hiring the person hired continues to render services, and the hirer knowing thereof does not object, it is presumed that the parties have made a new contract of hiring on the same terms as the former contract; but either party may give notice to terminate the contract in accordance with the provisions of Art. 627.

If a party has given security upon the former contract, it is extinguished by the expiration of the period; but this does not apply to caution money.

630.

The provisions of Art. 620 apply correspondingly to the hiring of services.

631.

When a hirer is adjudged bankrupt, the person hired or the administrator in bankruptcy may, even though a period for the hiring has been fixed, give notice to terminate the contract in accordance with the provisions of Art. 627. In that case neither party can claim compensation for damage arising from the termination of the hiring.

SECTION IX.

CONTRACT WORK.*

632.

Contract work is where one party agrees to accomplish a work, and the other party agrees to pay him a remuneration for the result of such work.

* *Locatio conductio operis* in Roman Law.

633.

The remuneration is payable at the time of the delivery of the thing contracted for. If a delivery is not necessary, the provisions of Art. 624, 1 apply correspondingly.

634.

If there is a defect in the thing contracted for, the party who ordered the work may fix a reasonable time and notify the contractor to make good the defect; but this does not apply if the defect is not material and the making it good would be excessively expensive.

The party who ordered the work may in place of, or in addition to, the making good of the defect claim damages, in which case the provisions of Art. 533 apply correspondingly.

635.

If, because of a defect in the thing contracted for, the object of the contract cannot be accomplished, the party who ordered the work may rescind the contract; but this does not apply to buildings and other structures upon land.

636.

The provisions of the preceding two articles do not apply if the defect in the thing contracted for arises from the nature of the materials supplied by the party who ordered the work or from directions given by him, unless the contractor knew that the materials or the directions were unsuitable and did not give notice thereof.

637.

A claim for making good a defect or for damages and the rescission of the contract as provided in

the preceding three articles must be made within one year from the delivery of the thing contracted for.

If delivery of the thing contracted for is not necessary, the period mentioned in the foregoing paragraph is computed from the time of the completion of the work.

638.

A contractor for a structure to be erected on land is liable for defects in such structure or in the foundations for five years from the time of delivery. For structures of stone, earth, brick or metal the period is ten years.

If the structure is destroyed or damaged by reason of one of the defects mentioned in the foregoing paragraph, the party who ordered the work must exercise the right mentioned in Art. 634 within one year from the time of the destruction or damage.

639.

The periods mentioned in Arts. 637 and 638, 1 can be extended by agreement, but only within the limits of the ordinary period of prescription.

640.

Even though a contractor has specially stipulated that he should not be liable as provided in Arts. 634 and 635, he is not exempted from responsibility arising from facts which he knew, but of which he omitted to give notice.

641.

So long as a contractor has not completed the work, the party who ordered the work may at any time rescind the contract on paying compensation for damage.

642.

If the party who ordered the work is adjudged bankrupt, the contractor or the administrator in bankruptcy may rescind the contract, in which case the contractor may intervene in the distribution of the assets as to his remuneration for work already done and for expenses not included in such remuneration.

In the case of the foregoing paragraph neither party can claim compensation for damage arising from such rescission.

SECTION X.

MANDATE.*

643.

A mandate is where one party directs the other to do a juristic act, and the other agrees to do so.

644.

A mandatary is bound to execute the business entrusted to him according to the main object of the mandate, and to use the care of a good manager.

645.

If required by the mandator, a mandatary must at all times give information as to the condition of the business entrusted to him, and after the termination of the mandate must without delay make a full report of what has been done by him.

646.

A mandatary must hand over to the mandator all money and other things which he receives in the execution of the business entrusted to him. The same applies to fruits taken by him.

---

* *Mandatum* in Roman Law.

Rights which a mandatary has acquired in his own name on behalf of the mandator must be transferred by him to the mandator.

647.

If a mandatary spends for his own benefit money which he ought to deliver to the mandator or to use for him, he must pay interest thereon from the day when he spent it. If any further damage arises, he is liable to make compensation for that.

648.

A mandatary may claim compensation from the mandator only by virtue of a special agreement.

If a mandatary is to receive compensation, he can claim it only after the mandate is performed; but if compensation is determined by periods, the provisions of Art. 624, 2 apply correspondingly.

If a mandate terminates for some cause not attributable to the mandatary, before it is completely performed, the mandatary may claim compensation in proportion to what has been done.

649.

If a mandatary will have to incur expenses in executing the business entrusted to him, the mandator must on the demand of the mandatary furnish the amount of them in advance.

650.

If a mandatary in executing the business entrusted to him has incurred expenses which could reasonably be regarded as necessary, he may claim from the mandator reimbursement for such expenses and interest on them from the day when they were incurred.

If a mandatary in executing the business entrusted to him has assumed an obligation which could reasonably be regarded as necessary, he may require the mandator to perform in his place or, if its time of maturity has not yet arrived, to give proper security.

If the mandatary by reason of the execution of the business entrusted to him has suffered damage without fault on his part, he may claim compensation from the mandator.

651.

A contract of mandate may be rescinded at any time by either party.

If one party rescinds the contract at a time which is disadvantageous to the other party, he must make compensation for any damage caused thereby, unless rescission was made for some unavoidable cause.

652.

The provisions of Art. 620 apply correspondingly to a mandate.

653.

A mandate is terminated by the death or bankruptcy of the mandator or the mandatary, or by the mandatary's being adjudged incompetent.

654.

If in the case of the termination of a mandate any pressing circumstances arise, the mandatary or his heir or legal representative must take all necessary measures, until the mandator, his heir or legal representative can himself take charge of the business entrusted to the mandatary.

655.

No cause for the termination of the mandate on the part of the mandator or of the mandatary can be set up against the other party, until he has been notified or had knowledge of it.

656.

The provisions of this Section apply correspondingly to a mandate whose subject is other than the doing of a juristic act.

SECTION XI.

DEPOSIT.*

657.

A deposit is where one party receives a thing and agrees to keep it for the other party.

658.

A depositary is not allowed without the assent of the depositor to use the thing deposited or to have a third person keep it.

When a depositary is permitted to have a third person keep the thing deposited, the provisions of Arts. 105 and 107, 2 apply correspondingly.

659.

A person who receives a deposit without consideration is bound to take the same care of it as he does of his own property.

660.

If a third person who asserts a right to the thing deposited sues the depositary or has the thing seized, the depositary must without delay give notice thereof to the depositor.

---

* *Depositum* in Roman Law.

661.

A depositor must compensate the depositary for any damage arising from the nature of, or any defect in the thing deposited, unless the depositor without fault on his part was ignorant of such nature or defect or the depositary knew of it.

662.

Even though the parties have fixed a time for the return of the thing deposited, the depositor may demand its return at any time.

663.

If the parties have not fixed a time for the return of the thing deposited, the depositary may return it at any time.

If the time for return is fixed, the depositary may return it before such time only in case of an unavoidable cause.

664.

The return of the thing deposited is to be made at the place where it was to be kept; but if the depositary has for any good reason removed it to another place, it may be returned at the place where it actually is.

665.

The provisions of Arts. 646-649 and 650, 1 and 2 apply correspondingly to deposits.

666.

If a depositary is entitled by the contract to consume the thing deposited, the provisions as to loans for consumption apply correspondingly, provided that, if the time for return is not fixed by the contract, the depositor may claim return at any time.

SECTION XII.

ASSOCIATION.*

667.

A contract of association is where each party agrees to engage in a joint undertaking and make a contribution thereto.

The contribution may consist of services.

668.

The contribution of each member and the other property of the association belong to all its members jointly.

669.

When a contribution is to be made in money, if the member fails to make such contribution, he must pay damages in addition to interest.

670.

The management of the affairs of an association is decided by a majority of the members.

If such management is by the contract of association committed to several members, it is decided by a majority of those persons.

The ordinary business of the association may, notwithstanding the provisions of the foregoing two paragraphs, be transacted by any member or by any managing member, as the case may be; unless another member or another managing member objects before its performance.

671.

The provisions of Arts. 644-650 apply correspondingly to members managing the business of the association.

* *Societas* in Roman Law.

672.

If by the contract of association the management of the business is committed to one or several members, such member or members may not, except for a just cause, resign or be removed.

For their removal for a just cause the consent of all the other members is necessary.

673.

Each member, even though he has not the right to manage the business of the association, may examine into the condition of the business and of the property of the association.

674.

When the parties have not fixed the proportion in which profits and losses are to be divided, it is fixed according to the respective amounts of their contributions.

If the proportion of the division is fixed only as to profits or only as to losses, the proportion is presumed to be the same for profits and losses.

675.

A creditor of an association, who at the time of the arising of his obligation did not know of the proportion of the division of losses, may exercise his right against each member for an equal part.

676.

If a member has disposed of his share in the property of the association, such disposition cannot be set up against the association or third persons who have entered into transactions with the association.

Before liquidation a member of the association cannot demand partition of its property.

677.

A debtor of an association cannot set off against his obligation an obligation existing in his favor against a member of the association.

678.

If the duration of an association is not fixed by the contract of association, or if it is specified that it shall be for the life time of a certain member, any member may at any time withdraw, but, except for some unavoidable cause, not at a time which would be disadvantageous to the association.

Even though the time of duration of an association is fixed, a member may withdraw for an unavoidable cause.

679.

In addition to the cases mentioned in the preceding article a member ceases to be such:—

1. By death;
2. By bankruptcy;
3. By incompetency;
4. By expulsion.

680.

A member can be expelled only for a just cause and with the consent of all the members. The expulsion can be set up against the member expelled only after notice of it has been given to him.

681.

The account between a member whose membership has ceased and the other members must be made up according to the actual condition of the property of the association at the time of the cessation of membership.

The share of such member may be refunded in money, whatever may have been the nature of his contribution.

The account as to matters not yet concluded at the time when membership ceases, may be made up after their conclusion.

682.

An association is dissolved when the business forming its object has been accomplished, or its accomplishment has become impossible.

683.

When an unavoidable cause exists, any member may demand the dissolution of the association.

684.

The provisions of Art. 620 apply correspondingly to a contract of association.

685.

When an association is dissolved, liquidation is carried out by all the members jointly or by persons appointed by them.

The appointment of liquidators is decided upon by a majority of all the members.

686.

If there are several liquidators, the provisions of Art. 670 apply correspondingly.

687.

If by the contract of association liquidators are appointed from among the members, the provisions of Art. 672 apply correspondingly.

688.

As to the functions and powers of the liquidators the provisions of Art. 78 apply correspondingly.

The remaining assets are distributed in proportion to the value of the contribution of each member.

SECTION XIII.
LIFE ANNUITIES.

689.

A contract for life annuities is where one party agrees to make prestations* in money or other things to the other party or to a third person at fixed times until his own death or that of the other party or of the third person.

690.

Life annuities are computed by days.

691.

If the debtor of a life annuity who has received a capital sum, fails to make prestation of the annuities or does not perform any other liability, the other party may claim the return of the capital; but he must repay to the debtor the amount which remains after deducting the interest on the capital sum from the annuities already received.

The provisions of the foregoing paragraph do not impair a claim for damages.

692.

The provisions of Art. 533 apply correspondingly to the case mentioned in the preceding article.

693.

If the death happens from a cause attributable to the debtor of a life annuity, the court may on the application of the creditor or his heir order that the obligation continue for a reasonable time.

The provisions of the foregoing paragraph do not impair the exercise of the right mentioned in Art. 691.

694.

The provisions of this Section apply correspondingly to a legacy of life annuities.

* See note p. 105.

SECTION XIV.

COMPROMISE.*

695.

A compromise is where parties agree to settle a dispute between them by mutual concessions.

696.

If by a compromise it is admitted that one of the parties has the right which forms the subject of the dispute, or that the other has not that right, and it is afterwards established that the former party did not previously have such right, or that the other party had it, such right is by the compromise transferred to such person or extinguished.

CHAPTER III.

BUSINESS MANAGEMENT.†

697.

A person who, without being bound to do so, enters upon the management of any business of another, must manage it according to its nature in such a manner as will be most to the advantage of the principal.

If the manager knows or ought to have known the intention of the principal, he must manage the business according to such intention.

698.

A person who manages the business of another in order to protect the principal from an imminent peril to his person, reputation or property is liable for damage arising therefrom only in case he acted in bad faith or with gross negligence.

---

* *Compromissum* in Roman Law.

† *Negotiorum gestio* in Roman Law.

699.

A manager must without delay give notice to the principal of his having entered upon the management, unless the principal already knows of it.

700.

A manager must continue his management until the principal, his heir or his legal representative is able to assume it, unless it is evident that such continuance would be against the intention of the principal or prejudicial to his interests.

701.

The provisions of Arts. 645-647 apply correspondingly to business management.

702.

If a manager incurs beneficial expenses for his principal, he may claim reimbursement from him.

If a manager assumes beneficial obligations for his principal, the provisions of Art. 650, 2 apply correspondingly.

If a person has managed the business against the intention of the principal, the provisions of the foregoing two paragraphs apply only so far as the principal is presently enriched thereby.

CHAPTER IV.

UNJUST ENRICHMENT.*

703.

A person who without any lawful cause has been enriched from another's property or services, whereby the other has suffered a loss, is bound to make restitution to the extent to which the enrichment still exists.

* This covers the ground of *condictiones* in Roman Law.

704.

If a person has been enriched in bad faith, he must make restitution of the profits received with interest. If any farther damage has arisen, he is bound to make compensation for that.

705.

If a person has made a prestation* as in performance of an obligation, knowing at the time that no such obligation existed, he cannot claim restitution of the subject of the prestation.

706.

When a debtor has made a prestation in performance of an obligation not yet due, he cannot claim restitution of the subject of the prestation. If, however, he made such prestation by mistake, the creditor must make restitution to the extent to which he is enriched thereby.

707.

When a person who is not a debtor has performed an obligation by mistake, if the creditor in consequence thereof has in good faith destroyed the documentary evidence or given up any security or lost his obligation-right by prescription, the person performing cannot claim restitution.

The provisions of the foregoing paragraph do not impair the right of recourse of the person performing against the debtor.

708.

A person who makes a prestation for an unlawful cause cannot claim restitution of the subject of the prestation, unless the illegality is only on the part of the person who has been enriched thereby.

* See note p. 105.

CHAPTER V.

WRONGFUL ACTS.*

709.

A person who intentionally or negligently violates another's right is bound to make compensation for any damage arising therefrom.†

710.

Whether the injury was to the person, liberty or reputation of another or to his property rights, the party bound to make compensation under the preceding article must make compensation even for damage other than that to property.

711.

A person who has harmed the life of another is bound to make compensation for damage to the parents, to the husband or wife and to the children of the person injured, even though no property right of theirs has been violated.

712.

A minor who has caused damage to another is not bound to make compensation for his act, unless he had sufficient mental capacity to understand his responsibility for such act.

713.

If a person while in a condition of mental unsoundness causes damage to another, he is not bound to make compensation, unless by his own bad faith or fault he had put himself temporarily into such condition.

---

* *Delicta* in Roman Law.

† To this Article another paragraph has been added by Law, No. 40, of March 7th, 1899, see Appendix.

714.

When in the cases mentioned in the preceding two articles the incapacitated person is not bound to make compensation, the person whose legal duty it was to control him is bound to make compensation for damage caused to a third person by him; but this does not apply, if he has not omitted to perform his duty of control.

The same responsibility rests upon a person who exercises control over an incapacitated person in the place of the person legally bound to do so.

715.

A person who employs another for a certain business, is bound to make compensation for any damage caused by the person employed to a third person in the execution of the business; but this does not apply if the employer has used due care in the selection of the person employed and in the control of the business, or if the damage would have happened even though due care had been used.

The same responsibility rests upon a person who has exercised control of the business in place of the employer.

The provisions of the foregoing two paragraphs do not impair the right of recourse of the employer or of the person who controlled the business against the person employed.

716.

A person who has ordered a work is not liable for damage done by the contractor to a third person in the course of the work, unless he was at fault in regard to the order or to his directions.

717.

If damage is caused to a third person by a defect in the construction or maintenance of a structure

erected on land, the possessor of such structure is bound to make compensation for the damage to the person injured; but if the possessor has used due care to prevent the happening of the damage, the owner is bound to make compensation.

The provisions of the foregoing paragraph apply correspondingly to defects in respect to the planting or propping up of bamboos or trees.

If in the cases of the foregoing two paragraphs there is also some other person who is responsible in respect to the cause of the damage, the possessor or the owner may exercise a right of recourse against such person.

718.

The possessor of an animal is bound to make compensation for any damage caused by the animal to another person, unless he has kept it with due care according to its species and nature.

The same responsibility rests on a person who keeps the animal in place of the possessor.

719.

If several persons by a joint wrongful act cause damage to another person, they are all jointly bound to make compensation for the damage. The same applies, if among several joint doers of an act the one who caused the damage cannot be ascertained.

Persons who instigate or assist in a wrongful act are deemed to be joint actors.

720.

A person who, in order to protect his own rights or those of a third person against the wrongful act of another, unavoidably commits a harmful act is not bound to make compensation for damage. This,

however, does not affect a claim for damages by the injured person against the person who did the wrongful act.

The provisions of the foregoing paragraph apply correspondingly where a person injures a thing belonging to another in order to avert danger imminent from it.

721.

A child in the womb is deemed to be born in respect to his right to claim damages.

722.

The provisions of Art. 417 apply correspondingly to compensation for damage from wrongful acts.

If the injured person is himself in fault, the court may take that fact into consideration in determining the amount of damages.

723.

Against a person who has injured the reputation of another, the court may on the latter's application order, instead of or together with damages, proper measures to be taken for the rehabilitation of the other's reputation.

724.

The right to claim compensation for damage from a wrongful act is extinguished by prescription, if it is not exercised for three years from the time when the injured person or his legal representative had knowledge of the damage and the person who caused it. The same applies if twenty years have elapsed since the time when the wrongful act was committed.

Appendix.

LAW, NO. 67, OF MARCH 16 TH, 1899, CONCERNING MORTGAGES OF ALIENS.

If an alien being a mortgagee of land demands a sale by auction for the sake of obtaining a higher price, he must add a statement in writing by which he binds himself that if the mortgaged property cannot be sold at the auction at a price of one tenth higher than the amount offered by the third acquirer, he will himself bear the difference between the amount offered plus one tenth and the price obtained at the auction.*

LAW, NO. 40, OF MARCH 8 TH, 1899, CONCERNING THE RESPONSIBILITY FOR FIRE.

The provisions of Art. 709 of the Civil Code do not apply to the case of fire, unless the person who caused the fire has committed a gross fault.

LAW, NO. 10. OF JUNE 21 st 1898, CONCERNING THE APPLICATION OF LAWS.

1.

A law takes effect after full twenty days from the day of its promulgation have elapsed, unless a different time has been specified by law.

In Formosa, Hokkaidō, Okinawaken and in the islands,† the time when a law shall take effect may be specially fixed by Imperial Ordinance.

---

* See Art. 384 *et seq.*

† The main islands, Hondō, Shikoku and Kyūshu are not included in the expression *tōdhi* used in this Article.

2.

A custom not contrary to public welfare or to good morals has the force of law, provided it is recognized by some law or ordinance or relates to matters for which no provision is made by law or ordinance.

3.

The capacity of a person is governed by the law of his country.

If an alien who would not have capacity under the law of his country but would have it under the law of Japan does a juristic act in Japan, he is deemed, notwithstanding the provisions of the foregoing paragraph to have capacity.

The provisions of the foregoing paragraph, however, do not apply to juristic acts to be done under the provisions of the law of relatives or of the law of succession or to juristic acts relating to immovables situated in a foreign country.

4.

The causes for which a person may be adjudged incompetent are determined by the law of his country, the effect of such adjudication by the law of the country in which it is made.

If as to an alien having a domicile or residence in Japan a cause for such adjudication exists according to the law of his country, the court may make such adjudication, unless the Japanese law does not recognize such cause.

5.

The provisions of the preceding article apply correspondingly to quasi-incompetent persons.

6.

If it is uncertain whether an alien is alive or dead, the court may make an adjudication of disappearance according to Japanese law, but only in regard to property in Japan and to such legal relations as are subject to Japanese law.

7.

The question as to what law shall govern in regard to the existence or effect of a juristic act is determined by the intention of the parties.

If the intention of the parties cannot be ascertained, the law of the place where the act is done governs.

8.

The forms necessary for a juristic act are determined by the law by which its effect is determined.

Notwithstanding the provisions of the foregoing paragraph forms complying with the law of the place where an act is done are effective; but this rule does not apply to juristic acts creating or disposing of real rights* and other rights for which registration is required.

9.

As to an expression of intention made to a person who is in a place having a different law, the place from which the communication is sent is deemed to be the place of the act.

As to the existence or the effect of a contract, the place from which the communication of the offer is sent is deemed to be the place of the act. If the person to whom an offer is made, at the time when he accepts it does not know the place from which the communication of the offer was sent, the place of the domicile of the offerer is deemed to be the place of the act.

* See Art. 175 *et seq.* of the Civil Code.

10.

Real rights in movables and immovables and other rights for which registration is required, are governed by the law of the place where the things subject to such rights are.

The acquisition and the loss of such rights is governed by the law of the place where the thing is when the facts forming the cause of such acquisition or loss are completed.

11.

The existence and the effect of an obligation arising from business management,* unjust enrichment or a wrongful act are governed by the law of the place where the facts forming the cause of such obligation have arisen.

The provisions of the foregoing paragraph as to wrongful acts do not apply to facts which came into existence in a foreign country but are not wrongful according to Japanese law.

Even though facts arising in a foreign country are wrongful according to Japanese law, the injured party can claim damages or other remedies only as established by Japanese law.

12.

The effect as to third persons of the assignment of an obligation is governed by the law of the place where the debtor has his domicile.

13.

The requisites of the existence of a marriage are governed as to each party by the law of his or her country. As to its forms, however, the law of the country where it is celebrated governs.

* *Negotiorum gestio.* See Civil Code, Art. 697 *et seq.*

The provisions of the foregoing paragraph do not affect the application of Art. 777 of the Civil Code.

14.

The effect of a marriage is governed by the law of the husband's country.

If an alien contracts a *nyūfu*-marriage† with a woman who is the head of a house, or becomes *mukoyōshi** of a Japanese subject, the effect of the marriage is governed by Japanese law.

15.

Arrangements as to matrimonial property are governed by the law of the country to which the husband belongs at the time of the marriage.

If an alien contracts a *nyūfu*-marriage† with a woman who is the head of a house, or becomes *mukoyōshi* of a Japanese subject, the arrangements as to matrimonial property are governed by Japanese law.

16.

Divorce is governed by the law of the country to which the husband belongs at the time when the facts forming the cause of divorce arise; but the court cannot decree a divorce, unless the facts forming the cause of divorce are recognized as such by Japanese law.

17.

The legitimacy of a child is determined by the law of the country to which the husband of the mother belongs at the time when the child is born. If such husband dies before the child is born, the legitimacy is determined by the law of the country to which he last belonged.

† See note to Art. 788.
* See note to Art. 786.

18.

The requisites of the acknowledgment of a natural child are governed as to the father or the mother by the law of the country to which he or she belongs at the time of acknowledgment, as to the child by the law of the country to which the child belongs at the time of acknowledgment.

The effect of an acknowledgment is determined by the law of the country of the father or the mother.

19.

The requisites of adoption are governed as to each person concerned by the law of his country.

The effect of adoption and the dissolution of it are governed by the law of the country of the adopter.

20.

The legal relations between parents and child are governed by the law of the country of the father, or if there is no father, by that of the country of the mother.

21.

The duty of support is governed by the law of the country of the person bound to furnish support.

22.

Except in the cases specified in the preceding nine articles, family relations and rights and duties arising therefrom are governed by the law of the country of the persons concerned.

23.

Guardianship is governed by the law of the country of the ward.

The guardianship of an alien domiciled or residing in Japan is governed by Japanese law only in the

case where, although a cause for such guardianship exists according to the law of his country, there is no person to exercise the functions of a guardian and an adjudication of incompetency has been made in Japan.

24.

The provisions of the preceding article apply correspondingly to a curatorship.

25.

Succession is governed by the law of the country of the ancestor.*

26.

The existence and the effect of a will are governed by the law of the country to which the maker of the will belongs at the time of its making.

The revocation of a will is governed by the law of the country of the maker at the time of revocation.

Notwithstanding the provisions of the foregoing two paragraphs the law of the place where the act is done may be followed as to the forms of a will.

27.

When the law of the country of a person is to govern, if the latter has two or more nationalities, such law is determined by the nationality last acquired; provided that if any of them is the Japanese nationality, the Japanese law is to govern.

As to a person who has no nationality, the law of his domicile is deemed to be the law of his country, or if his domicile is not known, the law of the place of his residence governs.

* See note to Art. 965.

As to a subject of a country of which the law is different according to the locality, the law of the locality to which he belongs governs.

28.

When the law of the place of the domicile of the person concerned is to govern, if such domicile is not known, the law of the place of his residence governs.

The provisions of Art. 27, 1 and 3 apply correspondingly to cases where the law of the place of the domicile of a party is to govern.

29.

When the law of the country of a party is to govern, if according to its provisions the Japanese law is to govern, the latter governs.

30.

When foreign law would govern, if its provisions are contrary to public order or good morals, it is not applied.